Exhibit “A”

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555 (JMP) (Jointly Administered)

Adv. Case. No. 08-01420 (JMP) (SIPA)

- -x

In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.,

Debtors.

- -x

In the Matter of:

LEHMAN BROTHERS INC.,

Debtor.

- -x

United States Bankruptcy Court

One Bowling Green

Room 601

New York, New York

November 20, 2008

2:00 PM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

HEARING re Case Conference

HEARING Debtors' Application to Employ and Retain Weil, Gotshal & Manges LLP

HEARING re Debtors' Application to Employ and Retain Curtis, Mallet-Prevost, Colt & Mosle LLP as Conflicts Counsel

HEARING re Debtors' Application to Employ and Retain Simpson, Thacher & Bartlett LLP as Special Counsel to the Debtors

HEARING re Creditors' Committee Application to Retain and Employ Milbank, Tweed, Hadley & McCloy LLP as Counsel

HEARING re Creditors' Committee Application to Retain and Employ Quinn Emanuel Urquhart Oliver & Hedges, LLP, as Special Counsel

HEARING re Creditors' Committee Application to Employ and Retain FTI Consulting Inc., as Financial Advisor

HEARING re Debtors' Motion to Enter into a Transition Services Agreement with Lehman Europe

HEARING re Debtors' Motion for Authorization to Implement the Retention and Recruitment Program

HEARING re Motion of ING Real Estate Finance (USA) LLC for Relief from the Automatic Stay

HEARING re Motion to Set Prompt Date for Assumption or Rejection of the Debtors' Amended and Restated Master Repurchase Agreement with Sixth Gear

HEARING re Motion of Sumitomo Mitsui Banking Corporation for Relief from the Automatic Stay to Foreclosure on Its Collateral [filed in Debtor Affiliated Case No. 08-13900 Docket No. 17, prior to entry of the Joint Administration Order]

HEARING re Motion of DnB NOR Bank ASA for Relief from the Automatic Stay to Effect Setoff or, in the Alternative, Adequate Protection

HEARING re Debtors' Amended Motion to Further Extend the Time to File the Debtors' Schedules, Statements of Financial Affairs and Related Documents

HEARING re SunCal Entities' Motion for an Order Granting Relief from the Automatic Stay

HEARING re Trustee's Amended Motion to Authorize and Approve Expedited Procedures for the Sale or Abandonment of Lehman Brothers Inc.'s De Minimis Assets

HEARING re Motion and Motion of DCP Parties for Leave to Conduct Rule 2004 Discovery of Trustee

HEARING re Application of the Trustee to Retain and Employee Norton Rose LLP as U.K. Counsel, Nunc Pro Tunc to October 27, 2008

Transcribed by: Clara Rubin

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P R O C E E D I N G S

THE COURT: Please be seated. Mr. Miller, good afternoon.

MR. MILLER: Good afternoon, Your Honor. Harvey Miller on behalf of the debtors, Your Honor. I thought, Your Honor, that I might give a slight succinct update of where we stand today, if I might.

THE COURT: Great.

MR. MILLER: I'm relieved to report, Your Honor, that under the leadership of Mr. Marsal and the Alvarez & Marsal team, the administration of the Chapter 11 cases has achieved a level of stabilization. Just to recap the major events up through October 16, we consummated the sale with Barclays Capital Inc. We've negotiated the sale of the investment management division, which is subject to an auction and court approval. That auction is supposed to be on December 1st of this year. We've consummated the sales of Eagle Energy Partners for a recovery of about 230 million dollars and R3 Capital Partners with a gross recovery of about 500 million dollars. And, in addition, there have been negotiations and other sales, including the sale of the G4. There are other claims which are on the market right now.

The financial condition of the debtors, Your Honor, and their liquidity has improved significantly. From September 15 through November 7, 2008, the aggregate cash balances have

increased by over 2.2 billion dollars. So the debtors and nondebtors are administering an aggregate of over 4.8 billion dollars in cash after refunding an inadvertent deposit made of almost 400 million dollars that was property that belong to LBIE, Lehman Brothers Europe.

Credited to the accounts of the Chapter 11 debtors is approximately 3.5 billion dollars. The balance of the 4.8 billion dollars represents monies held in Neuberger Berman and other nondebtor entities, but it's all subject to the oversights, Your Honor, of LBHI and its team.

The debtors have successfully instituted procedures to redirect remittances to new bank accounts. As a result of that process, it has obtained, or is in the process of obtaining, no setoff letters from other institutions so that it can open additional deposit accounts.

In terms of corporate governance, Your Honor, there was an extended meeting of the board of directors last Friday, November 14. At that meeting, the board passed a resolution that, effective of the close of business on December 31, 2008, Mr. Marsal will succeed Richard Fuld as the chief executive officer of Lehman Brothers Holdings Inc.

As to the administration of the Chapter 11 cases, as Your Honor will recall when Mr. Marsal was here, the number one priority was the collection and preservation of data. And it was the problem of the disintegration of the IT systems as a

result of the insolvency proceedings in the U.K. and in Asia, and also including the sale to Barclays Capital Inc. It resulted in limited access to the data and information that was necessary to the administration. So that became the first priority. And I'm happy to report, Your Honor, the situation is improving, and over half of the data has been captured to date. The number of crises is diminishing, and there are fewer emergencies as to deteriorating assets. There is complete control over the cash disbursements system and visibility and oversight over nondebtor cash and business activities. A weekly liquidity report is provided to FTI as the financial advisor to the statutory creditors' committee. Capability is being achieved to conduct forensic review and reconstruction of the financial records to bridge the August 31 balance sheet to September 15, 2008. And it's anticipated that the financial statements as of September 15, 2008 will be produced within the very near future. The problem has been to overcome unreconciled trades, and they're working on that very intensely, Your Honor. Efforts are underway to track all activity between September 15 and the respective filing dates of the seventeen subsidiaries that also filed in October. The debtors are also complying with the requirements under the securities laws and have filed a number of 8-Ks since the commencement of the case.

As to wind-down issues, Your Honor, after the

consummation of the Barclays transaction, the administration of the Chapter 11 cases started out with approximately 170 formal Lehman employees. Almost 10,000 employees, Your Honor, went over to Barclays, and we actually were counting that at 9,100, but it was much closer to 10,000 for at least a period of ninety days.

As a result of that workforce being so limited, Alvarez & Marsal had to dedicate a large number of people to the administration of the Chapter 11 cases. As of November 10, 2008, as a result of active recruiting to fill in holes as to different aspects of the administration and as to some level of attrition to the original 170 Lehman legacy employees, the headcount was 264 persons. The target for the year-end is to have a workforce of approximately 620 employees, the largest bulk of whom will be dedicated to working on derivates transactions. In addition to those employees, Your Honor, there are employees of Barclays Capital who have been dedicated to assist in the administration of the Chapter 11 cases pursuant to the transition services agreement with Barclays Capital as well as the Alvarez & Marsal teams and others.

In that connection, Your Honor, the transition services agreement with Barclays, as Your Honor may recall when Mr. Marsal was here, he alluded to the fact that it was a somewhat bumpy road. It was complicated by what happened to the disintegration of these systems, and also Barclays was, in

effect, orienting itself to what it had purchased. Since the beginning of November, there has been marked improvement in performance. Derivative inventories are substantially marked, loan book has been substantially marked, data capture is working well and financial and accounting issues are a work in process. Barclays has ring fenced, Your Honor, approximately 272 employees to support the Chapter 11 administration.

On today's calendar, Your Honor, we will be hearing about a retention recruitment program to retain current employees and hire former Lehman employees and other individuals with the requisite skill sets. This was created, Your Honor, in cooperation with the creditors' committee and has been adopted subject to approval by the Court. Employees are being recruited to that program -- I'm sorry. Employees that are recruited, Your Honor, will be broken into asset teams for: 1) derivatives, 2) real estate, 3) private equity, 4) bank book assets, 5) finance, 6) legal and 7) IT services. The objective is to create a workforce that is capable of administering the cases and allowing for the contraction in the number of Alvarez & Marsal people dedicated to Lehman. The result will reduce the cost of administration.

The debtors have also been negotiating, Your Honor, additional transition service agreements with other entities, and they have been negotiated or are in process. One to be heard today, Your Honor, is with LBIE. A cross-border

insolvency protocol is being negotiated for Lehman Brothers Holdings Inc., Lehman Brothers Inc. and Lehman Brothers Europe which provides for coordination and cooperation. A protocol was entered into with LBHI and Nomura Holdings Asia Pacific on September 29, 2008 relative to the sale of Lehman Asia. There is an administrator access letter between LBHI and Nomura Holdings, Inc. Asia Pacific that's dated September 29, 2008.

On October 6, another protocol was entered into with LBHI and Nomura Holdings India in connection with the sale of Lehman India. There is a TSA with LBHI/Eagle Energy Partners relative to the sale of Eagle Energy, and there are additional five more TSAs that are in the process of being negotiated with other entities to facilitate the administration of the Chapter 11 cases.

As to international proceedings, Your Honor, there are at least seventy-six different foreign proceedings covering over fifteen countries. The debtors are in regular contact with the administrators or receivers in those foreign proceedings. As indicated, TSAs or protocols for coordination, flow and access to information are being negotiated or have been negotiated. This is the list, Your Honor, I'm holding in my hand of the foreign proceedings, which just cover the entire globe. If Your Honor would like a copy, I'd be glad to hand --

THE COURT: I would like a copy.

MR. MILLER: May I approach? I will also bring up,

Your Honor, the latest organizational chart, which changes from day to day almost.

THE COURT: Fine. Well, I'm happy to look at today's version. Okay, thank you.

MR. MILLER: In most of those cases, Your Honor, Lehman Brothers Holdings will be the largest single creditor in those proceedings. As of yesterday, Lehman Brothers Holdings Inc. was appointed to the official creditors' committee in the Lehman Brothers Europe case pending in the United Kingdom. It is a committee consisting of five members and is scheduled to have its first meeting in London on December 3, 2008. Lehman Brothers Holdings Inc. was represented at the meeting of general creditors that was convened in London by the joint administrators, LBIE, and it was held on November 14, 2008.

In connection with transparency and access to information, Your Honor --

THE COURT: Why don't we stop there for one second?

MR. MILLER: Sure.

THE COURT: There seems to be a feeding frenzy for documents behind you, and I think we'll just wait till the scene calms down a little bit because I find it very distracting.

Why don't we resume with transparency?

MR. MILLER: In connection with the creditors' committee, Your Honor, there are daily calls with the

creditors' committee's professionals to review the status of the Chapter 11 cases. There is an in-person meeting with the creditors' committee at least once a month. The last meeting was held on November 13, 2008, a week ago. That meeting consumed almost four hours with an extended presentation on the part of the debtors.

There are -- in connection with the SIPA trustee, Your Honor, Mr. Giddens, there are weekly status updates and conference calls with the trustee and his professionals. The intention is to work more closely and in a more integrated fashion with the SIPA trustee and his staff.

As for the U.S. Trustee's Office, Your Honor, there is continuing discussion with the U.S. Trustee's Office as to the administration of the estate.

And as to individual creditors, Your Honor, I have to say that Mr. Marsal and the Alvarez & Marsal team have been very generous in devoting substantial time to numerous meetings with individual creditors and groups of creditors seeking information as to particular accounts.

In addition, Your Honor, there are a large number of Web sites which are devoted to the Lehman case. The primary Web site is www.lehman.com, which provides direct access to seven Web sites. Then there is www.lehmanbrothersestate.com, which provides direct contact information for approximately one hundred people at Lehman, Alvarez & Marsal and Weil, Gotshal &

Manges. This list is broken down by work streams and geographic regions. The third Web site, Your Honor, is www.lehman.com/press, which contains press releases described in the acquisition of IMD -- or potential acquisition, I should say, by Bain Capital and Hellman & Friedman. The fourth is www.nb.com, which has information relating to Neuberger Berman and links to the most recent press releases. The fifth Web site, Your Honor, is www.pwc.co.uk, which is the Web site of PricewaterhouseCoopers and the joint administrators, which provides information relating to the Lehman companies in the U.K. and European administration. The sixth is www.nomura.com, which has information relating to the acquisition of Lehman's Asia Pacific businesses. And the seventh, Your Honor, is www.barcap.com, which has information relating to Barclays investment banking and capital markets business. And the eights is www.barclayswealthamericas.com, which has information relating to Barclays' various investment services to individuals and businesses.

The debtors' claim agent also maintains a separate Web site at http://chapter11.epicsystems.com/lehman. This Web site effectively and efficiently allows the debtors to distribute information that includes: 1) full access to the docket at no charge, and is updated on a real-time basis, 2) a list of all Chapter 11 debtors, their case numbers and the filing date, 3) information with respect to asset sales,

including Barclays, IMD, CES Aviation and other entities, 4) information relating to the trading restrictions provided by the NOL order, 5) blank proofs of claim and mailing information for filing and 6) portions of information with presentations that were made to the creditors' committee.

The creditors' committee also maintains a Web site, Your Honor, at www.lehmancreditors.com, which contains information relating to: 1) significant events in the case, 2) a calendar of events, 3) monthly reports, 4) committee-filed pleadings and 5) committee professional contact information.

In connection with data preservation, Your Honor, as I said, it has improved at least a hundred percent. The debtors made an inventory of 400 thousand backup tapes. They have identified file servers containing two petabytes of information and ninety-three key applications. It is expected that the data preservation should be completed by year-end.

In terms of projected administration, Your Honor, the next major phase in the administration of these cases will be the forensic area of locating and recovering assets for the benefit of the respective estates. We have previously reported that there were approximately 1,450,000 derivative transactions that encompassed 8,000 counterparties. I'm afraid that did not tell the full story. In addition to those derivative transactions, there are intercompany derivative transactions approximating one million in number that have to be unwound,

analyzed and valued. The biggest area in this administration right now, Your Honor, is the derivates. The biggest recruiting program is to fill in that team. All the other teams are now complete. And what Mr. Marsal is looking for are people how have experience in the derivative area that used to work for Lehman.

THE COURT: I just have a question about your reference to the term "intercompany derivative transactions".

MR. MILLER: Yes, sir.

THE COURT: Are these all internal to LBHI and its affiliates or does it extend to the various proceedings that are pending around the world?

MR. MILLER: It may relate to other proceedings around the world, Your Honor.

THE COURT: Okay.

MR. MILLER: This is like peeling an artichoke, if that's the right expression, to find out where these all are. There are different -- in 4,000 companies, there are many transactions, Your Honor.

THE COURT: I think it's usually an onion, but we'll take artichoke today.

MR. MILLER: Okay. I don't eat artichokes anyway. There are continuing efforts, Your Honor, to determine the value of different investment accounts and transactions as well as the relationships with financial institutions, trading

partners and exchanges. That's peeling the onion, Your Honor.

Then, Your Honor, the other item is the examiner motions which are not on the calendar for today, but I would say to Your Honor that the issue of an examiner was discussed long before the motion that was made by The Walt Disney Company. It was anticipated at some point in these proceedings there would be a motion or even an affirmative motion by the debtors with the support of the creditors' committee for the appointment of an examiner, and that was under discussion. It was mutually agreed among the people who were discussing, obviously, that it made no sense to have an examiner until you stabilized the system, until you were able to close the books and create a factual basis and a foundation for which the examiner could proceed to do whatever investigation was authorized. And those discussions were underway when the motion was filed by The Walt Disney Company.

Since November 5, Your Honor, or whenever that motion was filed, we have been in discussions with various parties, including Disney, as to the scope of an order that Your Honor might enter in connection with the appointment of the examiner. And as one of the joinders to the Disney motion, I think, as the Harbinger Funds had suggested in its joinder, that the appointment should be deferred until the end of the year. We've worked on that principle and with Mr. Bienenstock in developing what might be the scope of the investigation.

In that perspective, Your Honor, the debtors have agreed with Disney, just the debtors, that it is in the best interests of the administration of the cases that there be a proposal of a consensual order for the appointment of an examiner containing a proposed scope of the examiner's duties. It's the intention of the parties, Your Honor, to present such an order to the Court at the omnibus hearing schedule for January 14, 2009.

THE COURT: Let me break in and just make this observation and comment --

MR. MILLER: Yes, sir.

THE COURT: -- in connection with this aspect of the report. As you might imagine, in addition to the thinking that has been going on that I am only now hearing about, I've also done some thinking about the subject of the examiner motion, which is not to be heard until January of next year. And while I will certainly be receptive to anything that may be proposed in a consensual order, it needs to be clearly understood that the discretion is solely mine and that you're not going to be usurping it by attempting to document something and ask me to rubber stamp, because that's not going to happen.

MR. MILLER: There was never any intention of that. That would be the last thing, Your Honor --

THE COURT: I want it to be really clear, however, since we're not dealing with any argument today in connection

with the examiner, that the parties are not going to craft this for my approval. I am going to decide the scope. It may be that there'll be complete overlap, but there may not be.

MR. MILLER: This would only be a recommendation, Your Honor --

THE COURT: Understood.

MR. MILLER: -- nothing more than that.

THE COURT: Okay. I'm just -- I'm not fencing you there as much as telling you that the power to appoint is mine, as is the power to determine scope.

MR. MILLER: Absolutely, Your Honor, but all that we have done, Your Honor, is try to flesh out some things that Your Honor might consider and also take input, for example, from the Office of the U.S. Trustee, which had various suggestions. And we also, Your Honor, to be candid, were contacted by the U.S. attorneys to make sure that they have their input into the order.

THE COURT: I recognize that --

MR. MILLER: And nothing, Your Honor, would be binding on you.

THE COURT: I understand, and I would certainly appreciate seeing what you have to propose.

MR. MILLER: Thank you, Your Honor. With that, Your Honor, I would go to the agenda for today.

THE COURT: That's fine. But just before we do that,

because this is the status report portion of the agenda, I'm going to simply ask if there's anything that the creditors' committee wishes to add. It may be that the answer to that is no, and that's a perfectly good answer.

MR. DUNNE: It is no at this time. Mr. Miller was very precise as to his description of the fact that the creditors' committee has not weighed in yet on the examiner motion. We expect to do that, with respect to the scope, between now and January. And either it will be on the sides of a recommendation to you or making our recommendations outside the four corners of the document that Mr. Miller's working out with Mr. Bienenstock. But he was precise on that.

THE COURT: Fine.

MR. MILLER: We hope, Your Honor, it will be a joint recommendation, for whatever it's worth.

THE COURT: I hope so too.

MR. MILLER: In turning to the calendar for today, Your Honor, and starting with the uncontested matters, item 1 is the application of the debtors to engage Weil, Gotshal & Manges under a general engagement. There are no objections, Your Honor, and it's all, of course, subject to further disclosures and reservation of rights on the part of the Office of the U.S. Trustee.

THE COURT: That's granted on a final basis.

MR. MILLER: The second matter on the calendar, Your

Honor, is the debtors' application to employ Curtis, Mallet-Prevost, Colt & Mosle and conflicts counsel, nunc pro tunc to September 26, 2008. Similar, Your Honor, without prejudice to further disclosure and the rights of the Office of the United States Trustee, there are no objections, Your Honor.

THE COURT: Motion granted.

MR. MILLER: The next application, Your Honor, is the debtors' application to employ Simpson Thacher & Bartlett as special counsel pursuant to Section 327(e) of the Bankruptcy Code, nunc pro tunc to the commencement date. In connection with this application, Your Honor, Simpson Thacher & Bartlett was very active in the Barclays sale and very active during that period up to the beginning of October. Essentially, I would point out, Your Honor, a lot of the services have been completed. There is really one active matter that's representing LBA Y.K. in a nondebtor indirect subsidiary of LBHI in litigation pending in the United States and Japan. That's the primary ongoing services, Your Honor. So subject to the same statement of our reservation of rights, I don't think there are any objections.

THE COURT: Application granted.

MR. MILLER: Thank you, Your Honor. The next three matters, Your Honor, on behalf of the creditors' committee, Mr. Dunne?

MR. DUNNE: Thank you. For the record, Dennis Dunne

from Milbank, Tweed, Hadley & McCloy, on behalf of the official committee of unsecured creditors. Agenda item number 5 is the creditors' committee's application to retain and employ Milbank, Tweed, Hadley & McCloy LLP as counsel to the committee effective as of September 17, 2008. We've received no objections to that, Your Honor.

THE COURT: That application is granted.

MR. DUNNE: Agenda item number 6, Your Honor, is the creditors' committee's application to retain and employ Quinn Emanuel as conflicts counsel to the committee, again, effective as of September 17, 2008. We have received no responses.

THE COURT: Also granted.

MR. DUNNE: Agenda item number 7, Your Honor, is the creditors' committee's application to employ and retain FTI Consulting Inc. as financial advisor effective as of September 17, 2008. We've received no responses.

THE COURT: That one is granted as well.

MR. DUNNE: And with respect to the Houlihan Lokey application, we've adjourned that to the December 16th hearing date, Your Honor.

THE COURT: Which leads me to ask if there is a pending concern of the U.S. Trustee's Office or any other party-in-interest in connection with that application.

MR. VELEZ-RIVERA: Andrew Velez-Rivera for the United States Trustee. Your Honor, we are in ongoing discussions with

Houlihan and with Houlihan's counsel with regard to several features of its application.

THE COURT: Fine.

MR. DUNNE: Thank you, Your Honor.

THE COURT: Thank you.

MR. MILLER: I might add, Your Honor, in connection with that, there will be an application on the part of the debtors to hire Lazard Freres -- Lazard Ltd. That has similar issues as the Houlihan application, and that has also been put on to the same date. I think it's December 16th, if I'm correct. So we're working on resolving those issues, Your Honor.

THE COURT: As long as we're talking about hearings in December, I just wanted to ask a question that ties into your reference to the Neuberger Berman transaction. There is currently scheduled a December 22 hearing date in connection with approval of that sale.

MR. MILLER: Yes, sir.

THE COURT: Just given the nature of that week and its closeness to year-end, I just wanted to confirm that that is in fact a firm date and that we're holding it.

MR. MILLER: It is a firm date, Your Honor, but under the terms of the IMD asset purchase agreement, there are various conditions in it which relate to the market. And if the market -- if the S&P goes below a certain amount, there is

an opportunity to walk. And we're not quite sure where Bain and Heller & Friedman will be when we get to December 1st.

THE COURT: Understood.

MR. MILLER: So it's --

THE COURT: But assuming that the market-out condition is not exercised, it would be the debtors' anticipation that a hearing will take place as scheduled on that date?

MR. MILLER: Yes, sir.

THE COURT: Fine. Thank you.

MR. MILLER: And that brings the issue, Your Honor, to the debtors' motion, I think it's number 8, Your Honor, to enter into a transition services agreement with Lehman Brothers Europe. The debtors are requesting authority to enter into this TSA. Frankly, Your Honor, I was always of the opinion that this was ordinary course of business, but from the standpoint of the joint administrators in London they prefer that we bring it before the Court and get a court order so that they are convinced that Lehman Brothers Holdings Inc. is bound by the agreement. The objective of the agreement, Your Honor, is the need to unwind the debtors' sizeable book of business in Europe, which consists of more than one million trading positions, amounting to billions of dollars in receivables for the estate. Lehman Europe employees possess the expertise and familiarity necessary to unwind the debtors' trading position.

Using other employees to unwind these trades would prove unfeasible and time-consuming and perhaps not particularly satisfactory.

So this transition services agreement was negotiated, and it would give us access to critical parts of the data and applications necessary to unwind those transactions. Without access to those systems, the debtors may not be able to execute trades or even evaluate their positions.

This was heavily discussed with the creditors' committee, Your Honor. The creditors' committee supports it. There was an objection of -- I think it was an objection, filed by Thomson Reuters. I believe, Your Honor, that that objection --

THE COURT: I read it as a reservation of rights with some limited objections associated --

MR. MILLER: Limited objections. But as you read on, Your Honor, the word "limited" sort of got dropped near the end of the objection. We've reached an agreement, Your Honor. We will make a representation on the record, and as I understand it, Thomson Reuters will withdraw their limited objection, the Chapter 11 debtors under the LBIE TSA acknowledge that they do not have the right and will not provide access to the Thomson Reuters platforms and systems to nondebtor third parties. The Chapter 11 debtors will work cooperatively with Thomson Reuters to promptly resolve all outstanding issues, including those

raised by third-party exchangers and vendors. And in that context, Your Honor, I believe -- I don't know if Thomson Reuters is present.

MR. LOBELLO: Good afternoon, Your Honor. Edward Lobello, Blank Rome, for Thomson Reuters. We did file a limited objection. As Your Honor knows, this was filed on a short notice. We had very limited time to react. We did file our objection; then had a conversation with Weil. The representations that Mr. Miller has made are accurate, and we will accept those.

THE COURT: And as a result, you withdraw your limited objection?

MR. LOBELLO: That's correct, Your Honor.

THE COURT: Fine.

MR. MILLER: In addition, Your Honor, as you know, LBIH (sic) has a TSA with Barclays, which I referred to before. Under the terms of that TSA, LBHI may not provide the services it receives from Barclays to third parties, and it may not sublicense under the TSA. To avoid any problems, we represent now that LBHI will not provide the services it receives under the Barclays TSA to LBIE, under the LBIE TSA or otherwise. Barclays and LBIE are negotiating their own TSA. And to the extent appropriate, LBHI will assist in those negotiations.

Lindsee, do you want to take --

MS. GRANFIELD: Yes. Thank you very much. We were

able to discuss this with -- excuse me, Your Honor. Lindsee Granfield, Cleary Gottlieb Steen & Hamilton LLP, on behalf of Barclays Capital. We're able to discuss this cooperatively with Weil Gotshal to obviate the need for filing an objection because we're just a little concerned about some of the language in the LBIE TSA. But with that representation, that's fine. Thank you very much.

THE COURT: Okay.

MR. MILLER: I might add, Your Honor, in connection with the LBIE proceeding in London at the general meeting of creditors last Friday, it was announced that that proceeding may extend to three or four years before there's any distribution to creditors of any significance. So that, which I think is like a microcosm of LBHI and the related debtors, is sort of a flashpoint for us, although we expect to move faster, Your Honor.

THE COURT: I would hope so.

MR. MILLER: I hope so. Not before the young lady has her baby but we hope to move quickly. With that, Your Honor, there are no other objections to the LBIE TSA.

THE COURT: Is there anyone who wishes to make any comment with respect to the LBIE TSA, particularly counsel for LBIE's administrators, if there's anyone here speaking on their behalf? If there's no comment and a shake of the head from Mr. Flicks, so I'll assume that this is really a weigh-up, and

I'll approve it.

MR. MILLER: Thank you, Your Honor. Number 9, Your Honor, is the debtors' motion for authorization to implement the retention and recruitment program. Again, Your Honor, this application was, I would say, almost a joint effort on the part of the debtors and the creditors' committee. There were extensive discussions about this program, valuations of the need and so on. The objective here, Your Honor, is to fill 620 job slots. The course, Your Honor, is not insignificant. The base salaries would be ninety-six million dollars if all these slots are filled. There's a bonus program that could approximate 110 million dollars. But what the debtors are looking for, Your Honor, are people with the appropriate skill sets to enable a very efficient and economical administration of these estates. And as I said before, the primary recruiting is being done in the derivatives area. It apparently is a field that not many people know about or understand. So getting the people that understand it is a real search project.

There have been no objections filed to this, Your Honor. It is in the best interests of the estate. I should point out, Your Honor, that after the motion was filed, there were negotiations with Mr. David Goldfarb. At a point in time, Mr. Goldfarb was in the top five at Lehman Brothers. Prior to the commencement of the Chapter 11 cases, he was not in the top five and had not been in the top five for several months, at

least. Mr. Marsal has negotiated with him, and he would come in as an employee, approximately about six months of service, Your Honor. He is -- background in the business, he is very experienced in the principal private equity portfolio, which is approximately thirteen billion dollars. And he has relationships with the persons who are employed both at Barclays and Nomura and would be of tremendous assistance, Your Honor, in the administration of the estate. So I just wanted to note that because that's not in the motion.

THE COURT: And what position would he have and what, if any, special compensation arrangements might apply to him given his seniority and importance to the project?

MR. MILLER: Your Honor, my recollection is -- I'm looking for my notes. I have them but I don't -- I think his base compensation, Your Honor, is 500,000 dollars on an annual basis. And then he has an opportunity to realize another 500,000 dollars based upon achieving the critical points on the incentive program. He's a -- sorry. I'm sorry, Your Honor. I have misstated. It's for the six-month period of 500,000 dollars. But the bonus is not guaranteed. He has to perform.

THE COURT: Okay. Thank you for that report.

MR. MILLER: I don't believe there are any responses or opposition to this, Your Honor.

THE COURT: Is there anyone who wishes to comment in connection with this application? Apparently not. I'm

prepared to approve it. And I recall, Mr. Miller, when you first broached the subject of the need to hire people who had the requisite experience and expertise to supplement the debtors' diminished human resources at a time when there was a tremendous need for expertise to deal with the derivatives needing to be unwound. And you mentioned at the time, which I think was one of the early status reports, that you saw this as a potentially controversial subject, or at least one that might attract attention. And I think it's worth noting that this has been presented and vetted to the point that the creditors' committee filed more or less simultaneously with the application and statement of support and at this hearing, which is well-populated, has produced not a single comment in opposition to what you're seeking. And I consider that to be an achievement worth, at least, noting.

MR. MILLER: Thank you, Your Honor. I would say, Your Honor, that both the committee and the debtors put in an enormous amount of effort into this to reach an acceptable package that would really benefit the administration of the estates.

The next matter, Your Honor, is the motion of ING Real Estate Finance (USA) LLC for relief from the automatic stay. I'll let counsel for --

MR. MARINUZZI: Good afternoon, Your Honor. Lorenzo Marinuzzi, Morrison & Foerster, on behalf of ING Real Estate

Finance. Pleased to report to the Court that we've an agreement in principle, and execution pages were exchanged this morning among the parties. Under this arrangement, Lehman would resign as agent and appoint ING as the replacement agent, and it would assign its loan position to Swed Bank, or Swede Bank. I've heard it pronounced it both ways. Assuming the client advises me that the papers are in order, we expect to file a formal withdrawal of the motion. The details of these arrangements were shared by the debtors with the committee. No objection was received. And as soon as we get the okay from the client, we'll withdraw the motion formally. Thank you.

THE COURT: Does that mean that the consensual arrangements that you're documenting will not be the subject of public disclosure and/or Bankruptcy Court approval because you are simply withdrawing the motion?

MR. MARINUZZI: We're simply withdrawing the motion. That's correct, Your Honor.

THE COURT: And does the debtor deem this arrangement to be ordinary course?

MR. MILLER: Yes, Your Honor.

THE COURT: All right.

MR. MARINUZZI: Thank you, Your Honor.

THE COURT: Thank you.

MR. MILLER: Just a point of procedure, Your Honor. Should we carry this until the formal withdrawal notice is

filed?

THE COURT: It probably makes sense for agenda purposes to just put it over to the December --

MR. MILLER: 3rd.

THE COURT: -- 3 hearing date. And we'll hold it there just for purposes of good order and assume that it will disappear automatically, assuming that the papers are signed, executed and delivered.

MR. MILLER: Thank you, Your Honor.

MR. MARINUZZI: Thank you, Your Honor.

MR. MILLER: Your Honor, moving to what has been described as contested matters, the first matter is the motion of Sixth Gear to set a date for assumption and rejection of a master repurchase agreement. That matter, Your Honor, has been resolved, and there's an order to be presented.

MR. LUCAS: Yeah. I was told that movant's counsel is going to appear and present an order.

MR. MILLER: Ah. There is movant's counsel.

THE COURT: Are you counsel for Sixth Gear?

MR. LEVITAN: I am, Your Honor. Good afternoon, Your Honor. Jeffrey Levitan, Proskauer Rose, counsel for Sixth Gear. We had a very constructive meeting yesterday with representatives of Sixth Gear and the debtors, and we have agreed on the terms of an order pursuant to which the debtors will reject the master repurchase agreement between Sixth Gear

and Lehman Commercial Paper and providing for a reservation of rights for all parties.

THE COURT: I take it the reservation of rights picks up the references to a counterclaim that I saw in the response papers?

MR. LEVITAN: It does, Your Honor.

THE COURT: Fine.

MR. LEVITAN: Thank you.

MR. MILLER: Thank you, Your Honor. Next matter, Your Honor, number 12, is the motion of Sumitomo Mitsui Banking Corporation for relief from the automatic stay. Your Honor, there is a settlement in process in connection with that matter. Your Honor may recall the matter when the question was is there going to be a valuation dispute. There will be no valuation dispute. We were hopeful, Your Honor, that the stipulation resolution would have been done by the time of the hearing. But there's a little wordsmithing going on, so I would suggest, Your Honor, we just put this over to December 3rd. And, in the interim, we will probably file the stipulation.

THE COURT: Mr. Hyman, do you wish to be heard?

MR. HYMAN: No, Your Honor. I agree with that. Thank you very much. Rick Hyman of Mayer, Brown, Rowe & Maw, on behalf of Sumitomo Mitsui Bank Incorporation. That is a correct description.

THE COURT: Fine. Great.

MR. MILLER: Thank you, Your Honor. Number 13, Your Honor, is the motion of DnB NOR Bank ASA for relief from the automatic stay. This, Your Honor, was, I think, if I recall correctly, was to be set up as a status conference with White & Case representing the moving parties. The parties are in negotiation, Your Honor, to resolve this matter. They are very confident that by December 3 it will be resolved. So we're asking that it be moved to the December 3 calendar.

THE COURT: Are you from White & Case?

MR. NICHOLS: Philip Nichols, White & Case, Your Honor, for DnB. Mr. Miller has correctly stated the status of the matter.

THE COURT: That's fine. And I'll simply note that when this came up at the November 5 hearing, December 3 was noted as an outside date for purposes of conducting what might have been a contested hearing. I take it from the comments both of counsel for the movant and for the debtor that parties are highly confident that this will be resolved prior to the December 3 hearing by consent. Is that correct?

MR. MILLER: The debtors are confident, Your Honor.

MR. NICHOLS: As with DnB, Your Honor. However --

THE COURT: Fine.

MR. NICHOLS: However, we would hope that we'd keep that on as for potentially being a contested hearing, if the

need arose, if the parties were not able to --

THE COURT: It'll be on the list, and what happens that day will be determined that day.

MR. NICHOLS: Thank you, Your Honor.

MR. MILLER: Your Honor, the next matter on the calendar, number 14, is the debtors' amended motion to further extend the time to file the debtors' schedules, statement of financial affairs and related documents. There is an objection that's been filed, Your Honor, by Harbinger Funds opposing the extension of time. As we have pointed out, Your Honor, in the motion and in the reply, in many respects, this is a unique, complex and a very large and complex case. And we have outlined, Your Honor, in the reply similar cases of almost this type of complexity and size in which the extension of time to file schedules and statement of affairs, etcetera, has been extended for a considerable period of time.

We have explained, Your Honor, and I think almost everybody is aware of the complexities of this case, particularly, with respect to closing the books, preparing the schedules, which is going to be a Herculean task, Your Honor, with the number of creditors and transactions that still have to be ascertained. And every day there are new situations that are popping up. An extension of sixty days, Your Honor, in the context of these cases, is really a -- almost mandatory because of the nature of this case. And for all the reasons we've

said -- I mean, the objection of Harbinger is there is no transparency. That may have been true, Your Honor, in the first two weeks of this case, but that has changed dramatically. As I pointed out, with the additional Web sites -- and there are a hundred names in one Web site, Your Honor, of people who can be contacted about individual problems, tracing their assets to the extent we can trace. And one of the problems is, Your Honor, is going through these wonderful technologically advanced systems that you keep hitting roadblocks and you have to find the person who can give you the password to get past that portion of it to get information.

But surprisingly, Your Honor, information is beginning to come in as to where, for example, somebody's securities may have been trapped on September 15th. So there is -- I would submit to Your Honor, there is a really great amount of transparency at this time and that every effort will be made to get these schedules and statement of affairs filed as soon as possible. And sixty days is a relatively mild request. So we submit, Your Honor, that the request should be granted.

THE COURT: Is Harbinger still pressing its objection? Apparently so.

MS. RUTKOWSKI: Good afternoon, Your Honor. Rheba Rutkowski from Bingham McCutchen representing the Harbinger

Funds. And, yes, we do continue to press our objection. Yes, we are concerned about transparency but, in this instance, we're concerned only about just broad disclosure of information to all creditors that the bankruptcy rules require be disclosed early on in the case. We appreciate all the obstacles that the debtors have run into in terms of trying to stabilize the situation and gain access to information, but the reasons proffered in support of this further request for an extension are essentially the same as the reasons proffered in the first request. And I wonder if we'll still be here in January with another request because what I'm hearing about progress, and I'm hearing that things are coming together and that there is stabilization and greater access, but I haven't heard anything yet that indicates that we will be any closer in January than we are today.

Our objection is limited. We're not asking for an order requiring that this information be disclosed tomorrow. We think by thirty days they ought to be able to provide something at least in accordance with what Mr. Marsal represented at the October 16th hearing. If they do have a handle on it, then we ought to have disclosure for everybody, not by contacting people on a Web site or asking for one-off meetings. Surely, that is not the most efficient way to proceed with this.

So, that's all we ask for is what the Bankruptcy Code

requires. And we haven't heard anything that constitutes, in our view, just cause for a further extension based on the same reasons that were supplied before.

THE COURT: Okay. I'm very mindful of Harbinger's early request for information and the fact that, at the time that request was initially made for 2004 discovery, this case was in a different place. And Mr. Miller's opening remarks today made clear that enormous progress has been made even in the last month in terms of stabilizing the business, normalizing its operations. And the ability as a result of the approval today of the debtors' ability to hire new people to deal with the unwind of derivative trades, to me, is a further sign that this a work in progress as to which very substantial work has already been accomplished.

But it is not unusual for bankruptcy courts to extend for cause shown the time to file schedules and statements of financial affairs. The Harbinger papers, as written, note that this is the largest -- and I think the language is "and perhaps the most complex" bankruptcy cases ever filed. And that recognition, I think, isn't a statement against interest as much as it is a statement that recognizes the elephant that is in the room. The elephant in the room is a massive information problem, massive in its quantity and massive in its complexity and enormous detail.

The fact that there are more Web sites than I can

count on the fingers of one hand confirms to me that reasonable efforts are underway to provide the public, which has a need to know, as much information as can be provided in a timely way.

I believe that the request to extend the time for the filing of schedules and statements of financial affairs through the middle of January is, under the circumstances of this case, an eminently reasonable time period. And even the Harbinger papers acknowledge that some more time is needed. So we're not quibbling over whether or not there is more time needed. It's an attempt by one creditor to cut back by thirty days the period of time that the debtor itself has said is needed to get the job done right.

I recognize that it's entirely possible, as counsel for Harbinger noted, that we may find ourselves at the January hearing with a request for additional time. There are circumstances in this case that may not be fully ascertainable now, but it's clearly squarely within my discretion to grant this additional time. It's certainly not an abuse of that discretion to do so, and I do so now.

MR. MILLER: Thank you, Your Honor. I don't want to gild the lily, Your Honor, but, as Your Honor may recall, Harbinger was the first of the Rule 2004 moving parties. And after the -- I think it was the October 6th hearing -- or the first omnibus hearing in October, Your Honor, Mr. Marsal and the Alvarez team spent over two and a half hours with

Harbinger's representatives going over the information that was requested by Harbinger. And Harbinger only has a claim based upon two swap agreements in this case, Your Honor. We have since discovered that Harbinger is a prime brokerage account with LBIE and has a bigger involvement with LBIE. But as a result of that conference, Your Honor, Your Honor may recall the Harbinger Rule 2004 motion was adjourned without date. So we did provide information. We continue to provide information every time there is a call from Harbinger. So we are trying to deal with that. And what Mr. Marsal said on October 16th that in forty-five to sixty days we should be able to answer specific customer requests, not that we'd be able to file schedules. So, thank you, Your Honor.

The next --

THE COURT: I think Harbinger's counsel would like something as a result of your having gilded the lily.

MR. MILLER: Okay.

MS. RUTKOWSKI: Yes. Thank you, Your Honor. I understand your ruling, and I respect it. I just wish to take issue and want to make clear that all we were asking for here are disclosures required by the Bankruptcy Code.

THE COURT: I know exactly what you were asking for.

MS. RUTKOWSKI: And it has nothing to do --

THE COURT: I know exactly what you're asking for, and I know exactly the reason that you asked for it. And

you're certainly within your rights to do what you did, and you've lost.

MS. RUTKOWSKI: Thank you.

THE COURT: So you can sit down now.

MR. MILLER: Your Honor, the next matter on the calendar, number 15, is the motion by the trustee of SunCal for relief from the automatic stay.

MR. GOTTFRIED: Good afternoon, Your Honor. Andrew Gottfried, Morgan, Lewis & Bockius, along with Paul Couchot of Winthrop Couchot, counsel for the movants on this matter. The SunCal, or SCC entities, which are about thirty some odd movants that are in bankruptcy cases pending in the Central District of California -- the movants are real estate development entities with projects that are in various states of development. The debtor, Lehman Commercial Paper Incorporated, and a nondebtor affiliate, Lehman ALI, have advanced approximately 2.3 billion dollars for the projects. They've stopped advancing, and the projects sit fallow. These advances are secured by deeds of trust on the projects' real property.

What we have here, Your Honor, is a true anomaly under the Bankruptcy Code, a situation not typical and, I believe, not contemplated by the Bankruptcy Code. In the relationship between SunCal and Lehman, SunCal is the debtor in bankruptcy and Lehman is the secured creditor. Yet, the

automatic stay in Lehman's case, the creditor's case in this relationship, prevents the debtors, the SunCal entities, from taking necessary actions in their bankruptcy cases. Now, what are these actions that SunCal, the debtor, wishes to undertake in their bankruptcy cases that implicate Lehman's automatic stay? Use of cash collateral, priming debtor-in-possession financing, potential Section 363 sales and a plan of reorganization, ultimately. All of these are debtor rights under the Bankruptcy Code which the SunCal entities are authorized to pursue in the Bankruptcy Court where their cases are pending which is the Central District of California.

Except for this unusual twist of fate, SunCal finds itself before this Court arguing with its secured creditor that it should be allowed to make motions which any other debtor in bankruptcy have the absolute right to make where their cases are pending.

THE COURT: That's not entirely true. You have the right to make all manner of motions in the bankruptcy case that have nothing to do with Lehman, including, if you had access to capital, a motion to borrow money junior to the Lehman secured position that didn't impact the Lehman position at all, or a motion for appointment of a trustee, or a motion to convert the case to a Chapter 7, or -- and you can go through the list. How about the appointment of an examiner? We just talked about that earlier today. You can do that.

MR. GOTTFRIED: Absolutely, Your Honor, but there's no money to pay it. All of the cash is cash collateral, Lehman's cash collateral. We can't use it without an order of the Bankruptcy Court in Central District of California.

THE COURT: So is your focus today use of cash collateral?

MR. GOTTFRIED: Our focus, Your Honor, is to obtain debtor-in-possession financing, use of cash collateral and a potential 363 sale. Clearly, plans of reorganization are further down the road. And these are all intertwined. We can't get a DIP loan without a priming lien. And we recognize that this is a burden that will have to be met in our case.

THE COURT: It's also a burden that, as you describe it, would be a burden imposed on the Lehman estate because, unless they're consenting to such a priming lien, which I suspect they're not consenting to, you end up with a valuation hearing, the expense of expert witnesses, the burden of significant legal expenses on all sides, including the Lehman side, and a burden on this estate. Isn't that right?

MR. GOTTFRIED: The way you posit it, Your Honor, yes, but I submit this is an improper way of looking at it. The automatic stay is designed to protect a debtor from creditor action. In the instant case, Lehman's automatic stay serves to protect a secured creditor from debtor relief in bankruptcy which, we believe, Your Honor, turns the automatic

stay on its head.

THE COURT: If you were involved in a priming fight -- I mean, I'm not having an argument with you; that's for Mr. Kessler to do, I suspect. But if you're involved in a priming fight, there'd be a new lender imposed over Lehman potentially taking value away from Lehman, and that would be the creditor, not the debtor, that would be seeking relief at Lehman's expense and would be causing Lehman, through the debtors' efforts, in your California case, to incur unnecessary expense and distraction. So I think, while I understand your colorful argument that it's been turned on its head, it really hasn't been in your example because it's a new creditor of your California debtors who will be coming in at your request to take advantage of the Lehman position and collateral.

MR. GOTTFRIED: Well, respectfully, Your Honor, "take advantage", I would submit, is a harsh way of looking at it. We would have the burden of convincing the California court that Lehman's position was adequately protected. And there's no reason to assume that the California court is not able to make that kind of determination.

THE COURT: Yes, but it would be, if contested, a determination that can only be made after the expenditure of some cost expense delay, inconvenience and the like. It wouldn't happen easily. And I suspect that Lehman will not go quietly.

MR. GOTTFRIED: That may very well be, Your Honor, but, again, the automatic stay is for the protection of the debtor, not the secured creditor. And it is Lehman's position as secured creditor that's at issue here. Every secured creditor would prefer not to have a priming lien motion made against them in Bankruptcy Court, but no other secured creditor has the right to stop the debtor from doing that. That's what Lehman is asking for, Your Honor, in objecting to this --

THE COURT: Actually, Lehman's not asking for anything.

MR. GOTTFRIED: In objecting to this motion.

THE COURT: Mr. Gottfried, you're not -- Lehman's not asking for anything. Lehman is in court not because they're asking for something. They're in court because you're the moving party asking for something. So you have it backwards.

MR. GOTTFRIED: Well, let me postulate this, Your Honor. Lehman's objection to this relief: What is it really going to do on a practical level? On a practical level, what they're saying is if we, SunCal entities, want to make a motion for a priming DIP in our bankruptcy case, we have to first convince Your Honor of the merit of that motion. That's really what they're asking for in the practicalities of this, that we have to try our priming motion first before Your Honor, and if Your Honor agrees with our position at that point that there is merit to our priming motion, you would then grant us relief

from the automatic stay. We would then go to California in our Bankruptcy Court and make our motion for a priming lien, priming DIP yet again, and they would get to argue yet again before the Bankruptcy Court in California that the relief shouldn't be granted. I would submit, Your Honor, that this is not a tenable proposition where you have two competing bankruptcy cases like this that to require the debtor in the California case because of the happenstance of the Lehman case to try all of its motions twice is unfair and unnecessary. There's sort of this sub silentio, I think, tenor in opposing this motion that somehow Lehman's not going to get a fair shake out there, and there's no basis for that. Lehman will have the rights of any secured creditor in opposing whatever relief we seek from the Bankruptcy Court in California. The automatic stay was not designed to promote a secured creditor's position the way it is attempted to be utilized in this instance.

Since we made this motion for relief from the automatic stay, the nondebtor Lehman affiliate, Lehman ALI, served additional foreclosure notices on us. This is turning the automatic stay not from the shield that it's supposed to be into a sword to be used against another debtor in another court. This just isn't -- it isn't fair. And it just isn't a practical way to handle the coordination of two debtors that find themselves in the circumstances that they're in.

THE COURT: Well, let me tell you what the practical

way is. Mr. Miller, during his opening status report, commented on a number of bankruptcy cases that actually all involve Lehman entities around the world, and parties-in-interest in those cases are working cooperatively with each other with different estates. Litigation is not the answer; some attempt to consensual resolution might be. And that's not to say that it's possible in this instance, but your rhetoric about how unfair it is that your lender happens to be in bankruptcy, believe me, your lender doesn't think it's so fair to be in bankruptcy either. There are a whole bunch of world circumstances that caused that. And if your particular client happens to be at the wrong end of this proceeding, as they used to say in law school, you take your plaintiffs as you find them. Well, you take this lender as you find it, which is a large complex Chapter 11 debtor that happens to be your lender, to the tune of 2.3 billion dollars. That's a huge asset to protect in this case. And you're suggesting to me that what I should do in the interest of giving you the ability to file any motion you want to file in cases that are not before me is to basically strip away the singular benefit that this debtor has, which is the automatic stay, for no cause shown? Simply that there's the potential for a brush fire on one of your properties? This was listed today, Mr. Gottfried, as an emergency as a result of a hearing that took place by phone in which one of your colleagues urged me to list this early

because there was a stated emergency. And the stated emergency included a list of potential horribles that could befall the assets in California. I don't for a minute suggest having seen video reports of brush fires in California that it's not a very real risk. But why should this estate bear any of it?

MR. GOTTFRIED: I think, Your Honor, number one, we weren't suggesting unfairness by Lehman but unfairness by the circumstance of the automatic stay, which I don't believe was intended to apply in this situation. Others may disagree, but that's what I believe. We are an extremist. We have no access to any funds whatsoever. We do have real practical problems, and I recognize this is not an evidentiary hearing where we can put that forth. And we think it is justified, Your Honor, to weigh the relative harm and not just focus on the fact that this is a substantial asset for Lehman, an asset that it holds as a creditor. There is a countervailing equity in favor of the SunCal companies, which are stymied right now because they can't do anything of practicality in their bankruptcy cases, that while Your Honor mentioned that there are types of motions that can be made, which is true, but not the critical motions that have to be made in any case where all of the assets are subject to a lien. We have no use of cash collateral. We have no ability to get a DIP loan because nobody's providing one on a junior basis. That's just the facts which I don't think are subject to any dispute.

So to say that the matter can be resolved, of course, I'm the first one to suggest that matters in most instances can be resolved, but we don't find ourselves either with a luxury of time, because of the condition we're in in California, for a prolonged discussion which we've tried to have. We're out of time. That's just the facts. We're not stripping Lehman of any rights. There's a court that will hear any motions that we bring before it. If we don't have merit to our motions, the Court will deny it. And, yes, there will be some expense involved for the estate, but this is an asset of the estate that, obviously, it will want to protect and it's worth the expenditure of some money if they view it as being advisable. But to say, in effect, that we're just going to put those cases on ice in California because Lehman has the automatic stay is not right. I don't think it's in Lehman's interest, but it's not for me to say so. But it's certainly not in the interest of the SunCal debtors that are frozen in position. We can't do anything in these cases without access to funds. We have no funds to do anything.

And we can, I'm sure, debate about, if it comes down to this, whether brush has to be cleared or levies fixed or security measures taken against vandalism and things like that, but that's really not the point. The point is we're just frozen in place. And we realize this is a massive case, Your Honor, nobody every suggested otherwise, with multiple

interests. But this is truly, I believe, a unique situation. To my knowledge, this did not come up before in this case, and I don't know whether it will subsequently. But it is juxtaposition where the debtor is the creditor and, therefore, can hold its debtor at bay in its bankruptcy case. And what we are suggesting, Your Honor, is to just break that Gordian Knot so that normal debtor/creditor relations in bankruptcy can proceed. And I'm not for a moment denying yes, some funds will be expended, but this estate has the funds, certainly, to appear in Bankruptcy Court in California on a few occasions if it deems it advisable to protect its large investment. And I think it's that type of balancing, Your Honor, that's critical to this situation. But to just, in effect, say well, work it out, well, we'd love to work it out.

THE COURT: Mr. Gottfried, that's not what I said. Just to the extent that you're in a throwaway attempting to characterize comments from the bench, I'm going to break in and correct you. What I suggested was not just work it out; I suggested that there are examples already available to me in this case of parties who have been successful in resolving enormously intricate problems, intercreditor problems, within the Lehman enterprise itself, demonstrating that it is possible for creative hardworking intelligent people to find solutions. Obviously, there are remedies available if those solutions can't be crafted.

You have, however, come in on an emergency basis seeking a blanket lifting of the automatic stay. At the time you filed your motion, there was a general reference to DIP financing. The DIP financing motion was not attached, not described in detail. I didn't even learn the identity of the lender until a telephone conference when I asked the question. So the papers that bring you to Court are incredibly broad in general and seek incredibly broad and general relief, which goes well beyond which I consider appropriate in terms of showing the cause that you need to show.

Additionally, you need to be married to the Sonax standards, and I'm not at all sure that you have satisfied one of them. You make what amounts to an equitable argument, "we're in trouble and we need help from you," so that we can go to the Bankruptcy Court in California and file the motions that we need to file that admittedly will be disadvantageous to Lehman. Give me your list of Sonax standards that suggest to me that stay relief is appropriate today.

MR. GOTTFRIED: I'm afraid, Your Honor, that our position, as I've tried to articulate -- that this is a unique circumstance. It's not just Sonax; it's the unique circumstance that what we're talking about is the automatic stay, not as debtor protection but as creditor protection, because that's the relationship between the parties here.

My client's the debtor in this relationship. Lehman

is the creditor. At the very least, Your Honor, we should be permitted to make a motion for use of cash collateral and a motion for debtor-in-possession financing.

THE COURT: So is that a modification of your motion?

MR. GOTTFRIED: If it would please Your Honor, then, yes. If it would please Your Honor, that would at least enable us to start a process in the works. And I appreciate Your Honor didn't have a DIP term sheet; these things are sort of fast-moving. As Your Honor can appreciate, sometimes DIP loans don't get finally negotiated until a hearing in court or a half hour before the hearing in court, and that's not always in the control of the debtor that these things are fluid. But there's no reason, Your Honor, respectfully, that we shouldn't at least have the opportunity to take our best shot at preserving something here and avoiding a worse situation. If Lehman is correct that it wants to oppose our motion it will have every opportunity to do so.

THE COURT: But at the moment, the only motion that Lehman is opposing is your motion for broad-based relief from the automatic stay to allow you to do whatever you think you need to do in your bankruptcy cases in California. That's the only motion which I'm aware of which is pending.

MR. GOTTFRIED: That is, Your Honor. And if we could have stay relief to make a motion for use of cash collateral and for obtaining debtor-in-possession financing, that would at

least enable us to start down a process. And I'm not precluding discussions with Lehman as that process goes on, but it puts us on a level playing field to move forward.

THE COURT: There was a question that I asked you that you didn't answer, and I'm not going to press you on it but I'm simply going to give you the opportunity, if you wish to, to give me the list of Sonax factors that you believe are satisfied here.

MR. GOTTFRIED: I don't think it's the list of Sonax factors, Your Honor; I think it's cause based upon the relationship of the parties here that the stay was not intended as a creditor protection.

THE COURT: So your argument is more or less exclusively based on the fact that you believe it is anomalous for a secured creditor to also be a debtor in a bankruptcy case entitled to automatic stay protections and that that is a situation which was not contemplated by the drafters of the code or Congress in enacting the automatic stay? Is that your argument?

MR. GOTTFRIED: Yes, Your Honor. I believe that is the case. Now, this is not to say that we don't have other factors that we could present about the extreme situation we're in, but I recognize this is not an evidentiary hearing so that -- but I don't believe --

THE COURT: But that's your legal argument?

MR. GOTTFRIED: Yes, that is correct, Your Honor.

THE COURT: Okay. I understand your argument.

MR. GOTTFRIED: Thank you, Your Honor.

MR. KESSLER: Good afternoon, Your Honor. Michael Kessler for Weil, Gotshal & Manges, for the debtors. Based on the argument of the movants and also on the Sonax case decision, which says that the movant must establish a prima facie case before the debtor even has to respond, I think that it would be appropriate in the nature of a motion for judgment to ask that you deny the motion before I even respond and then, if necessary, I should go on. I don't believe that they've made a prima facie case.

THE COURT: Well, we're just having a family argument. Rather than treat this like we're at the midpoint of a jury trial, I think what we're going to do is give you an opportunity to express on the public record why I should deny this motion as opposed to simply assume that your opponent has already fallen on his sword.

MR. KESSLER: All right. The SunCal bankruptcies in California are enormously complicated, and, as you heard, there are approximately thirty of them that have now been filed. This motion, however, only relates to approximately fourteen of those cases. The 2.3 billion dollars of Lehman loans and first-lien mortgages relate to those properties and not to many of the others. And so what you see before you is just,

perhaps, the tip of the iceberg. And if you open this door today for the lift stay, I believe you're going to be flooded with these types of things.

THE COURT: Explain that to me. Let's just say, for the sake of discussion, that I were to agree that the stay should be lifted. What is the parade of horribles that flows from that?

MR. KESSLER: Well, I will go through what the lifting of the stay, pursuant to the motion before you, will result in. But as you so noted from reading their pleadings, they are not looking in their motion to lift the stay solely to obtain use of cash collateral and to get a priming DIP lien. That's what they wanted to do initially. But their motion is more expansive than that as it's asking this Court to lift the automatic stay, for all purposes, in their case. And we already know that another of the SunCal cases in California which they haven't brought before you for a lift stay yet -- there have been representations made in pleadings and even copies of complaints attached as exhibits in an effort to stop Lehman foreclosures of its properties in other cases that they intend to bring fraudulent conveyance actions, insubordination actions under 510(c) and other affirmative actions. So what this motion is not telling you up front, when they say we want to do four things but perhaps more and we're asking you to open the door for everything, is not telling you that undoubtedly

what they want to do is try to bring other affirmative actions against Lehman in these cases, too.

Now, if I may, I'd like to kind of go through with you my argument as to why the stay shouldn't be lifted here. First, contrary to what you heard, this Court should not give any special deference to the fact that the SunCal entities are in their Chapter 11 proceeding. There's nothing in Section 362 or in the cases that in any way alters the burdens or the test for a Chapter 11 debtor to obtain stay relief from another Chapter 11 debtor. I believe that this Court needs to look at their motion to lift stay in the same way as it would if they were a nondebtor in Chapter 11 and they were attempting to bring an action or a lawsuit against this Chapter 11 debtor in another court, because that's exactly what they would be doing. They're seeking affirmative relief in the form of a priming DIP loan or the use of cash collateral or any of the other things that they would do if you opened the door here.

Now, to give any special deference to them because they are a Chapter 11 debtor is, in essence, this Court saying their Chapter 11 cases are more important or more significant than these Chapter 11 cases, that our automatic stay should give way because they are in a Chapter 11. And I don't believe that there's any case law --

THE COURT: Mr. Kessler, let me break in and just ask you a question on that. I'm not trying to intrude on the

sequence of your arguments but there's something that concerns me. It's not a question of whether one Chapter 11 case is more important than another, as much as what happens, just in terms of case administration, to the various cases that are pending in Santa Ana, California. If there is never any relief from the automatic stay, these Lehman cases have the potential of being long-lasting. Mr. Miller, at the outset, talked about cases in the U.K. that might go on for four years, and I have no idea how long these cases will be active before me. But is it your position that there is a permanent freeze on case administration in the California bankruptcy cases? Because that's a problem, too.

MR. KESSLER: Right, and I do not make that argument.

THE COURT: So is there a way --

MR. KESSLER: I'm here arguing against the motion that's before you today --

THE COURT: I understand, but --

MR. KESSLER: -- not any other motion that may be brought. And Your Honor made one suggestion, and that is the parties should talk and try to reach some form of consensual agreement. There are other ways that Courts have resolved these difficult issues where there are debtors in multiple bankruptcies. We've had protocols, for example, in other cases. And that's not a subject that's on the calendar for today, but it's something that Your Honor might suggest the

parties talk about. But it's not something that should be raised today when they're asking for this type of emergency relief. So there are other options that don't necessarily involve an immediate lifting of the stay.

THE COURT: Fine.

MR. KESSLER: Now, as Your Honor pointed out, we have to look at the statute, and Section 362(d)(1) tells us that, as far as the SunCal debtors are concerned, the only basis for their lifting the automatic stay is 362(d)(1) for cause. And during the telephonic chambers conference in which they sought an expedited hearing for this motion, Your Honor permitted the hearing to go forward today with legal argument only and noted that if an evidentiary hearing is necessary we would reschedule it for another day.

And so I understood that ruling to mean that this will be, if it doesn't conclude today on oral argument, a preliminary hearing under 362(e) and that if an evidentiary hearing is necessary we'll go to a later adjourned date for that as a final hearing. The reason I say that is because I want to raise in defense of their motion a lot of fact issues that are in their motion, in attachments to their motion, and are relevant to the matters raised in their motion but are not identified for them. And to the extent -- and I don't believe that they're subject to any form of dispute, but if they are, then I think that we're entitled to go to the next hearing and

put evidence on to show what I will demonstrate.

So they haven't made any prima facie showing of cause here at all. In fact, Your Honor asked several times how do you meet the Sonax factors, which is the Second Circuit's test for relief from the automatic stay in a situation of this sort. They cite the Sonax. They say in their pleading that Sonax controls but they don't, in any way, try to demonstrate to the Court that they do meet the Sonax factors. Well, in fact, if you do go through the Sonax factors, you see that they don't actually meet them in this case. The way the Sonax factors are weighed is that where a movant seeks relief from the automatic stay in order to bring an action against the debtor -- excuse me, I shouldn't say against the debtor. In order to bring an action in another court to the effect that that action does not affect the debtor or does not affect the debtor materially, it weighs more in favor of lifting the stay. But the first Sonax factor says that if there is lack of any connection with or interference with the bankruptcy case, then it weighs more in favor of lifting the stay; whereas when there is a strong connection to the bankruptcy case, where there is interference with the bankruptcy case, it weighs strongly in favor of not lifting the automatic stay. Here, as Your Honor so rightly pointed out, in order to get a priming DIP loan where they've already conceded that we have a first lien secured mortgage on all of their properties for 2.3 billion dollars, they would be

taking affirmative action against the estate clearly in violation -- I shouldn't say in violation, but clearly in a way that the first Sonax factor says you should not lift the stay.

There are other Sonax factors that clearly weigh against lifting the stay: whether the other proceeding involves a debtor as a fiduciary; whether the debtors' insurer has assumed full responsibility for defending; whether the action primarily involves third parties; whether the litigation in the other forum will prejudice the interest of other creditors. All of these factors clearly weigh in favor of not lifting the stay here because we don't have a situation, for example, where it affects third parties and not so much the debtor. We don't have a situation where an insurer is going to take over the litigation on behalf of the creditor and, therefore, it won't affect the estate. We don't have a situation where the litigation in the other forum will not prejudice the interests of creditors in this case. All of those factors weigh strongly in favor of not lifting the stay here.

There are at least two other Sonax factors that are not relevant at all here: whether the judgment claim that they seek in the other action is subject to equitable subordination; whether the movant's success in the other proceeding would result in a judicial lien against the debtor. In sum, the SCC motion relies almost entirely on grounds for cause that are

just allegations that don't meet any of Sonax factors.

Now, let me go through some of what they say in their motion. The allegations they make in the motion are a complete red herring. What they say is that they have these emergency expenses and that these debtors committed, through a restructuring agreement, to advance monies to cover these expenses. We've advanced all the monies that were to be advanced under the 2.3 billion dollars in first liens. They're not saying that there are any monies to be advanced there. What they're saying is that there is this restructuring agreement between the parties in which the debtors agree to advance monies for emergency repairs. The restructuring agreement is attached to the declaration of Mr. Cooke, which is, in turn, attached to as an exhibit in their motion. And it is clear, if you look at Section 1(h) of the restructuring agreement on page 5 of that agreement, that if any party is obligated to advance funds for emergency basis, it's Lehman ALI, Lehman A-L-I, who is not even a debtor in this case. There is nothing that restructuring agreement -- that even if there were an obligation that they allege that would commit or require a debtor in this case to advance those funds.

THE COURT: Let me stop you for a second on that point, Mr. Kessler. In the ordinary course of troubled real estate workouts or bankruptcies, secured creditors, who do not necessarily have a legal obligation to do so, will nonetheless

make so-called protective advances in order to assure that their collateral will be secure and that the value of their investment will be preserved and protected. What I don't understand in terms of the current dispute, and I'm not suggesting it needs to be answered now, but I'd like you to think about it at some point between today's hearing and the next hearing if there is one, is why there isn't a business solution and why either the nondebtor Lehman ALI, as a potential funding source, if it has liquidity, or given the billions of dollars in cash resources that Lehman currently has, wouldn't consider it prudent, assuming it were prudent, to protect this asset. It's a 2.3 billion dollar investment; some cost.

MR. KESSLER: I think I can address that, Your Honor, as --

THE COURT: Okay.

MR. KESSLER: -- I continue through. It's a little convoluted, but I think I can address it.

THE COURT: I'm used to convoluted.

MR. KESSLER: Okay. If I can refer next to page 3 of their motion and continuing on to page 4, the movant set out in seven bullet points the details of their alleged needs for emergency funds as a substantiation for lifting the stay here. The first bullet point speaks to a need for cash to avoid the calling of completion bonds to complete the streets -- or to

complete streets. The calling of these bonds would indeed result in cash to complete the streets. To ask for a priming DIP lien to avoid the calling of the bonds is for one reason and one reason specifically, and that is because some of the principals of the SunCal entities are personally obligated on the bonds. And to have someone else fund those expenses relieves them of personal liability. And what they would do is have Lehman advance those funds when there are other sources of cash available in the form of the completion bonds.

Now, the second bullet point speaks to cash needs for the Pacific Point project. The SCC entities no longer even own this project. The project was foreclosed by Lehman and is owned by a Lehman entity.

The fourth, sixth and seventh bullet points relate to the 10,000 Santa Monica, the Oak Knoll and the Delta Cove projects. These projects are not even covered by the restructuring agreement, which they use as their basis for Lehman's obligation to advance funds to them. If you read the agreement, those three projects are not even projects that are to be funded under that agreement.

Now, the reason -- the primary reason for seeking emergency relief from the stay is alleged to be a desire to obtain a seventy-five million dollar priming DIP loan that would prime Lehman's approximately 2.3 billion dollars of first liens. And the motion, of course, doesn't identify the lender.

But at our chambers conference, Your Honor required that they provide us with a copy of the term sheet for that loan, and they did.

And so the term sheet perspective lender is from D.E. Shaw, and we reviewed the term sheet. As we say in our response, there's at least two strong reasons based on that term sheet to not grant the stay relief that would allow the SCC entities to proceed with the fool's mission, as we say it, to seek approval of this DIP loan. This DIP loan is nothing but a blackmail loan in order to compel Lehman to come in and protect its property interest by advancing the monies. And, in fact, it has already been somewhat successful in that blackmail mission. We have given them an alternate DIP proposal. We haven't discussed it with them yet because we only gave it to them yesterday, and we would welcome the opportunity to discuss it. But one of the obvious means for getting that term sheet was to compel Lehman to try to advance monies.

Now, why do I say that? They concede in their motion, in several places, in paragraphs 2, 7 and 20, and also in the declaration, that all of the SCC entities' assets are encumbered by Lehman's first lien. Lehman's loans are 2.3 billion dollars, and no one here will contest that the collateral value has declined far below the 2.3 billion dollar loan amount. If there was equity in these properties, they would have said so in their motion. They would have put their

best foot forward in their motion to get relief from the stay here, but they didn't.

In addition, they concede that there are no unencumbered assets from which they can give adequate protection to Lehman. You can't give us adequate protection from the collateral we -- from excess value in the collateral. They can't give us adequate protection from unencumbered assets because there are none. And they have no other means for providing adequate protection. Again, I would offer, Your Honor, if they did have adequate means, you would have seen it in the motion or you would have heard someone say it here because they're trying to get relief from the stay.

So why would the Court grant this type of stay relief to force us to go to California and defend against that DIP motion with property appraisers and an awful lot of money spent in legal fees and other professional fees when it's clear on the face of it that they don't have a basis for providing adequate protection? But even assuming, arguendo, that one could convince a Court that Lehman would somehow be adequately protected, the D.E. Shaw term sheet outlines what we call an egregious loan that cannot be consummated under its terms or alternatively as a classic loan to own. It's a blackmail loan to steal Lehman's property if Lehman doesn't come up and pay off that loan. And here's why. The loan has a ninety-day maturity date, and it provides for the immediate requirement to

file a 363 motion to sell the assets. So if that loan were approved for the full seventy-five million dollars, a 363 sale motion would have to be approved by the Court, and this property would be put up for sale immediately. And if not sold, the loan would mature in ninety days and D.E. Shaw would be in there trying to foreclose out Lehman's 2.3 billion dollars of liens in order to pay them back seventy-five million dollars.

Now, I would submit to you that the SCC entities can't even meet the closing conditions because, among other things, it requires that LV Pacific Point LLC be a borrower. That's a company that Lehman owns entirely. It's the company that took the Pacific Point project through foreclosure. So they can't meet that condition of the term sheet.

They also can't meet the condition of the term sheet because some of the other required borrowers who are in bankruptcy through -- the involuntarily petitions have been filed against them are entities in which Lehman controls the equity. And so they couldn't give those properties and those -- they couldn't make those entities borrowers to D.E. Shaw without Lehman's consent.

Now, the D.E. Shaw loan gets even worse. This seventy-five million dollar loan for a maximum ninety-day term has a fourteen percent interest rate, a four and a half million dollars in cash fees paid half at closing and half at the

ninety-day maturity and a half percent per month, which is an additional six percent per annum, payable monthly on the unused portion of the seventy-five million dollars, calculated together, this loan -- the interest and fees over the ninety-day period calculates out to a thirty-eight percent interest rate for the ninety-day period. And it's all being paid out of the funding of the DIP loan. So, in essence, D.E. Shaw is lending money and putting it back in its own pocket for a ninety-day period.

Now, as I mentioned earlier, what we're going to have in this ninety-day period, if it's somehow approved, is we're going to have a 363 motion to sell the property. And if it doesn't sell in the ninety days, we're going to have a foreclosure action to pay off the DIP. So what does all this mean to Lehman? Within ninety days, Lehman, to protect its interest in the collateral, securing it's 2.3 billion dollars in loans, we're going to have to step up to either buy out the D.E. Shaw loan at the 363 sale or at the foreclosure sale. And we're going to end up buying out that loan inclusive of the over seven million dollars in interest and fees that will have been paid, the expenses that would have been advanced so that the bonds are not called, where we could have called the bonds and let those monies be used to pay property expense.

And so how does the weighing of harm in this case tilt in favor of the SCC entities? As I mentioned earlier,

this is a blackmail DIP loan. They know, and anyone who looks at it knows, that these debtors, these Lehman debtors, are going to have to come in and protect their interest and advance up to seventy-five million dollars if that DIP loan is approved. There is no other way out of it. These debtors can't repay the property -- I mean, repay the loan. They've admitted it. They're either going to sell it or let it go to foreclosure. And the only advantage of this process for SCC is to not allow these bonds -- these completion bonds to be called.

And so for all those reasons, we clearly don't believe that the motion carries the day and that this Court should protect Lehman under its automatic stay from having to undergo that process and have to fight its way in a California court on this fool's mission for them to get a DIP loan that is clearly engineered to be blackmail upon Lehman to force it to come in and fund those amounts.

And, as I've said, it has now partially worked because we've given them a proposed alternate DIP loan: different terms, no fees, lower interest rate and also, for obvious reason, lower an amount. And if the Court denies the lift stay motion, I think it's perfectly reasonable that we'll go out and start talking to them about our alternate proposal.

You asked me the question earlier why doesn't Lehman want to advance the funds to protect this collateral, and I

said I would answer it. And I'm saying to you that's why we propose an alternate DIP loan. We think that our alternate proposal for a DIP would advance the necessary funds to protect our collateral in a reasonable way, paying the most emergency -- the expenses that are the greatest emergency on a program that the SunCal entities had previously presented to the Lehman entities. There is no need for seventy-five million dollars here. There is no need for high fees. There's no need for egregious interest rates. And there's no need to compel Lehman to come in and pay off someone else's loan in ninety days.

THE COURT: Thank you. I'll hear from the creditors' committee.

MR. DUNNE: Thank you, Your Honor. For the record, Dennis Dunne, from Milbank Tweed, on behalf of the Official Creditors Committee. I'm not going to repeat the arguments in the pleadings or made by Mr. Kessler a few moments ago, which frankly moots out a lot of what I had to say. But let's just take it back to the motion that was actually filed here today and talk about why we think that that should not be granted and then some suggestions for moving forward.

Unfortunately, there are just some realities we can't change. I'm sure there are not many, if not most, Lehman creditors who wish that in the middle of September the Fed had made a different determination with respect to bailing out

Lehman or not. But they did what they did, or didn't do what they didn't do, and we're here today. SunCal, no doubt, wishes that their secured creditors weren't in Chapter 11, but they are and we can't change that. And it is those secured claims that constitute the property of this estate; they're assets of these estates.

And part of the argument that counsel for the movants were making I didn't fully comprehend or it didn't make sense to me. It's the notion that those claims, or secured claims, which are assets -- clearly the automatic stay protects them. I don't think counsel for the movants would be arguing that if SunCal were not in bankruptcy that they could somehow slot in a priming loan on top of Lehman's secured claims if SunCal was outside of Chapter 11.

So if you posit that is the case, I know of no law or no legal precep that the automatic stay which protects Lehman, and we've done nothing to alter that, we haven't left Chapter 11, we haven't confirmed a plan or lifted the stay, can be affected by the fact that somebody who wants to take action against property of the estate has, themselves, filed for Chapter 11.

Also, counsel for the movants, I think, postulated that we will end up arguing the same legal arguments twice: once before Your Honor and once in California. I don't think that's true either because, while there are two Chapter 11

cases, the relief, obviously, is different depending on which court we're in. And I think they recognize that by moving to lift the stay before Your Honor to seek approval of financing in California.

So you have the standards under 362, which we submit we haven't heard any evidence with respect to. And you'll have the standards under 364, potentially Section 363 in California. There's simply no reason to dispense with the automatic stay because of inconvenience or perceived unfairness. Yes, this case -- or these cases and this fact pattern are unusual and extraordinary but it is a factual reality we can't ignore, and I think we've got to give effect to both cases and the law that's applicable in both.

In terms of the way forward, and everyone's touched on this, there are ways to deal with this. We should have at least ad hoc negotiations with respect to what they need to accomplish now and to see whether we can address that. Maybe we can formalize larger, more permanent workarounds or protocols, but we haven't had time or the opportunity to do that. But today, under the currently crafted request for an umbrella opt-out of the automatic stay on this record, as it applies to the Lehman estates, the committee submits is just not proper and the request should be denied.

And unless Your Honor has any questions, that's the committee's position.

THE COURT: I don't, thank you. I'll hear from Mr. Gottfried, who wanted to say a few words in response to Mr. Kessler's argument.

MR. GOTTFRIED: Thank you, Your Honor. Counsel for the committee actually had a curious statement, which was that he didn't believe we would have this two-court problem that I mentioned previously. But I disagree, and I think the basis for that disagreement was made clear by counsel for Lehman because what counsel for Lehman was doing before was arguing the merits or their perceived lack of merits in a DIP term sheet for a motion that we haven't made yet for a DIP loan. And that is the legal predicament that we are in, Your Honor, right now, which is that if we want a DIP loan, whether it's D.E. Shaw or XYZ or even Lehman, that we have to, in effect, under the present circumstances, try it first in this Court and then, if Your Honor agrees it's appropriate, try it again in California. And that would be true even if it were a Lehman DIP loan without relief from the automatic stay.

And that, Your Honor, I submit is not proper. It's not proper procedure, it's not proper coordination through two bankruptcy courts and it is unfair. No one's seeking to take advantage of Lehman. They will have all of their arguments. And if the DIP motion we ultimately make is as bad as they portray it, I suspect the Court will deny it.

THE COURT: Which court?

MR. GOTTFRIED: The court in California, if Your Honor grants us stay relief to make that motion. But, instead, counsel was telling you everything that's wrong with it, and that, of course, is designed to influence Your Honor and say gee, this is a terrible DIP proposal, I'd never approve it. But I think that misses the point. That misses the point that this two-step process doesn't work. And what we're suggesting is a one-step process, and that's true for anybody who makes us a DIP loan, whether it's D.E. Shaw, whether it's Lehman, whether it's somebody else who we manage to rustle up on the eve of our hearing in California.

And what I'd respectfully request, Your Honor, is that we have stay relief at least to seek debtor-in-possession financing and use of cash collateral. To the extent that other relief is sought in our motion, we could adjourn that. But this is our immediate need, right now Your Honor, and it has to be faced. And I'm submitting, Your Honor, that a one-court solution is the best solution to this situation. Thank you.

THE COURT: I don't think there's any need for further discussion. This is a highly unusual circumstance, as everybody seems to recognize, but there's nothing unusual about the automatic stay, which is something that every bankruptcy lawyer is totally familiar with. And the jurisprudence surrounding the automatic stay and the circumstances for a judge in this circuit to grant relief from the stay happen to

be very well-established.

There's absolutely nothing about the circumstances described by counsel for the movant that takes the situation out of the normative case law that guides the Court. Just because the secured claim happens to be a show stopper, from the perspective of the debtors in Southern California doesn't mean that the secured claim is not entitled to all of the protections that Section 362 provide.

The motion, in the form that it was presented which has been heard on an expedited schedule at the request of the movant, seeks broad relief that is not currently focused on use of cash collateral of DIP lending, although both of those issues are identified within the motion. The objections that have been filed by the debtor and by the creditors' committee to the relief sought are fundamentally sound in noting that the relief is broad and unspecified would expose the Lehman estate to a parade of horribles and is not presently warranted on the current record.

As a matter of law, counsel for the movant declined the Court's invitation to focus on the Sonax factors and instead focused on an equitable argument, that it's simply unfair to these debtors, in their California cases, to be subjected to what amounts to a blocking position of a secured creditor who happens to be benefitted by the automatic stay. That's just the way it is. And that's the way it will remain

until such time as one of the following things occurs. Either the SunCal parties move again with a targeted motion focused on particular relief for cause shown or the parties, following discussions, agree by stipulation to limited relief from the automatic stay. Or the parties, through discussions, reach agreement concerning the terms and conditions of financing that may be afforded by Lehman related entities.

Mr. Gottfried is wrong when he suggests, in his final argument, that if Lehman were the lender that the same problem would exist. Of course it wouldn't exist. If Lehman were the lender it would be a consensual arrangement. It would include consensual stay relief and the terms and conditions would no doubt be perfectly acceptable to Lehman because Lehman was offering the deal.

To the extent that the only lending which is available in California is lending which comes on a priming basis, a priming fight in the current environment is something to be avoided. I encourage the parties, however, to talk to each other and to talk constructively with each other about ways to solve the financing aspect of this problem. That doesn't mean that they're going to reach agreement nor does it mean that that's the end of the problems that the SunCal entities are exposed to in their bankruptcy cases. But let's recognize reality, if Lehman entities hold secured claims of 2.3 billion dollars somebody in charge at the SunCal companies

needs to be speaking with, dealing with, respecting the rights of the Lehman entities because they're not going to get out of bankruptcy without passing through Lehman. Lehman's right will be protected in this court except for cause shown, which hasn't been shown today. Motion denied without prejudice.

MR. MILLER: Thank you.

THE COURT: And I'll accept an order that so holds.

MR. MILLER: Thank you, Your Honor. If I might, Your Honor, I would go to the adjourned matters. There are, in addition to the three matters which we put over from the early calendar.

THE COURT: Before you go to the adjourned matters, I noticed that this happened during the last omnibus hearing on November 5, and there's no problem with it if you want to do it, but you went through the list and we had a review of everything that was adjourned, which took some time.

MR. MILLER: I'm not proposing to do that, Your Honor.

THE COURT: I'm proposing you don't do that.

MR. MILLER: I was just going to say, Your Honor, there are nineteen matters. Fourteen are being adjourned to December 3, four to December 16, two to January 14 and one to February 11th.

THE COURT: I accept that summary.

MR. MILLER: I would just point out, Your Honor, at

the rate that we are receiving objections to various matters on the December 3 calendar; it looks like it's going to be a very long, extensive calendar. So I'm just alerting the Court.

The one other matter, Your Honor, is the adversary proceeding. And I think Your Honor's familiar with that. The pre-trial conference as put over, I think, to December 16th or something like that Your Honor. So that's fine and I will now turn the podium over to the LBI trustee, Your Honor.

THE COURT: Thank you very much, Mr. Miller.

MR. KOBAK: Good afternoon, Your Honor. James Kobak, Hughes Hubbard & Reed for Mr. Giddens, the Lehman Brothers, Inc. trustee.

Your Honor, if you wish I'm prepared to give a brief status report, I hope a little bit briefer than Mr. Miller's, just to bring you up to date on progress.

THE COURT: I'd be interested in hearing it.

MR. KOBAK: And then Mr. Wiltenburg will handle our actual calendar for today.

I want to focus, as I have in the past, on the return of customer property because that's really what our proceeding is all about. Unlike some of the other proceedings that you've heard about today, our effort has been to get property to customers and I don't mean any criticism of anybody else it's just that a SIPC proceeding has a different focus and SIPC, particularly in this case, has really emphasized that this

should be our goal.

As I've reported, we've transferred approximately 135,000 accounts with approximately 140 billion dollars worth of property to Barclays and to Neuberger Berman. That process, I just want to make clear to everybody, that transferring these accounts isn't quite as simple as pressing a button, particularly when it comes to moving the attendant property. And that's a process that's continuing. We've made a lot of progress, probably ninety-eight or ninety-nine percent of the property has been moved by now. But we still remain to do that. We have disputes, sometimes, with Barclays or with people who are holding our collateral. There are a lot of books and records to reconcile and so forth. So it's still an extensive process. It involves a number of LBI people some of whom are now ring fenced for us by Barclays. It also increasingly involves people from Deloitte. SIPC oversees the process and when there are questions about whether funds can come out of the 15(c)(3) account or so forth, the SEC will also be involved.

I reported last time that we had begun, under our protocol of dealing with the prime brokerage accounts, that attracts a lot of attention so I wanted to spend a few minutes on that today. The process that we established is not a traditional SIPC claims process, although it's similar to that. But the idea was designed a process so that people could get

identifiable property back as quickly as possible when it's available to be returned to them.

The prime brokers can avail themselves of this process or if they don't like the results they're always free to file a claim in the SIPC proceeding.

We have, approximately, 250 relationships which covers something like 750 accounts; most of the prime brokerages have several accounts associated with them. It's a very complicated procedure because there are a lot of transactions in these accounts. In some of the equity accounts there are margin accounts. Some of the accounts have repos where there may be funds owing to Lehman that may have to be netted out against what they can claim. We have to look, in some cases property was collateralized or other Lehman entities, particularly LBIE, has rights or claims to some of the property involved. So we have to research all of that.

Early on we had some difficulties getting access to the screens that were maintained by third parties, where some of these accounts were located. We've been able to resolve those questions, most of the time, although I think as Mr. Miller was alluding to, there's still problems with somebody's password not being recognized or the like. And it can be a somewhat cumbersome process.

Our process is, originally most of this work was done, again, by Legacy LBI employees. We've tried to move away

from that although there's still a number of them that we rely on that have been ring fenced. And we've increasingly brought Deloitte into the process. On this process alone we know have twenty-five Deloitte people who look at these accounts and do the reconciliation and check the work and so forth. Overall we're now up to 135 Deloitte employees that help us with various aspects of the liquidation.

In addition to our people and the former Lehman people and the Deloitte people, SIPC has made available several staff members who are here on a weekly basis, rotating basis, in New York. And they supervise the work that's done. The SEC is also involved. They don't really bless or approve the process necessarily but when there are questions, again, about the 15(c)(3) account or something like that, they're available and they're aware of the process.

So it's a somewhat lengthy and arduous process, probably more so then we envisioned when we got started at it. There are just a lot of questions to be resolved sometimes in these accounts.

When we've reached our determination of what we think is properly owing to the customer as the appropriate disposition of the account, there's then a -- and often this actually starts before the work is completely finished, but there's a back and forth communication with the account involved to make sure that they agree and to work out any

problems with disposition. So that can sometimes take a little bit of time.

To date we've basically satisfied, and we can't in all cases completely satisfy the claim because, as I've said, there may be some property that LBIE or some other entity has claims to or there may be some amounts that are still owing to Lehman. But we have substantially completed the process with respect to about 120 of these 250 relationships. Currently we have about twenty that are with the customer involved for the customer's review. So we're just waiting, really, for the customer to get back to us.

There are around ten cases where, for various reasons including sometimes when you net everything out the customer owes us money and so they don't really want to submit to this process. So there are another ten of those. And there are about a hundred that we're still working on, almost all of which have now been completed or substantially been completed by Deloitte and in many cases reviewed by SIPC and looked at by the SEC as well.

So again, it will take some time. It'll take several weeks, I think, to complete that process but we have made a lot of progress. But I just did want some of the creditors, customers in the audience, to understand that this is not a simple procedure, you don't just get a piece of paper and say okay, we owe you this and send it out. There's a lot of work

and reconciliation that goes into this.

When we finish that process, as Your Honor knows, you approved a couple of weeks ago our claims forms and our claims process. We had intended that those be mailed out by December 1st. Our claims people, EPIC, actually say they may be able to commence that mailing a little bit early, perhaps by Thanksgiving. So that won't really affect the bar date that customers have but it will give them a little more time to deal with the forms.

We've set up a process for dealing with those claims. A combination of EPIC people, a large number of Deloitte people will be reviewing them in the first instance.

As I've said last time, we mailed out, I think it's 830,000 customer claim forms and another 100,000 proof of claims for general creditors. No one has any experience in a liquidation of this size and this nature, I don't think, as to how many claims we're likely to receive. Many accounts have been transferred out so one would think that those people would not have claims, in most cases, although there might be some. But we do anticipate we will probably get a lot of communications from people who might be somewhat confused by the process.

And we do have a number of accounts remaining and we probably will have a number of prime brokerage and other customers who will have some disputes, if not about the way

their claims were handled at least about some property that couldn't be returned to them. We are anticipating that there will be people with repos and certain kinds of derivatives that probably do not have what we consider customer claims, or at least that's our initial analysis, and they may well dispute that. Fortunately or unfortunately for Your Honor, I think there'll be some very interesting issues that will be coming before the Court.

And we think that the claims process, we'll try to do it as expeditiously as we can, but if we have the volume of correspondence and communications that we fear that we may have, I think it's going to be a somewhat lengthy process before we get to the end of it.

At this point we have a fairly small internal staff. We are trying to beef that up selectively. But to a large extent we're relying on Deloitte, at this point. You're about to hear a motion to appoint Norton Rose as counsel, so they will be playing a role with respect to monitoring some of the activities in LBIE particularly. They've also been helpful with some asset sales and questions that have arisen, really all around the world, particularly in Asia with some of the other proceedings that are pending.

We are not quite as far along as some of the other entities in working out transition service agreements; we have been discussing that with Barclays. They have identified and

we've discussed with them a number of ring fence people. We haven't completely determined what the terms are but we are making good progress on that. I suspect that to some extent we will have a similar agreement, perhaps, with LBHI and Alvarez. But even in the absence of such an agreement we have been working cooperatively with them.

Your Honor heard about protocols for the international proceedings and we have been in discussions about that. I have to say that I think that just because of the nature of our proceeding, that we are a bankruptcy liquidation we're not a reorganization. We have had a big focus on getting property returned. That to some extent our interest and the interest of the others diverge a little bit with respect to some aspects of the protocol. But having said that, we are very anxious to enter something that would deal with sharing of basic information and to the extent possible, dealing with claims on a cross border basis because we certainly have a lot of claimants who also had or think they had property at LBIE. And I know LBIE has the same situation with respect to some of their claimants. So we are all spending a lot of time doing drafts of protocols and I think we're making progress. It's not an easy process because this is a pretty unprecedented situation.

One final thing I want to focus on is the examination of the debtor, under Section 78 (FFF-1)(d) and particularly

subparagraph 2, a SIPC trustee has a specific power and duty to conduct an examination of the debtor, to take depositions, to report to the Court and the creditors on what he's found. And we take that responsibility very serious. We think that shortly it will be time to embark on that and we do intend to embark on it. We will be issuing a report, both as to some of the causes of the liquidation and to causes of action and other things that we discover during the process. And that will also involve things like inter-company receivables and so forth.

So I just wanted Your Honor to know that we do have that responsibility. We do intend to discharge it and I think we will begin discharging it as soon as we can get a little further along on the process of returning customer property.;

THE COURT: Thank you for that report.

MR. KOBAK: Thank you, Your Honor.

(Pause)

MR. WILTENBURG: Good afternoon, Your Honor. David Wiltenburg, Hughes Hubbard & Reed representing James W. Giddens as trustee for the liquidation of Lehman Brothers, Inc.

Your Honor, I believe there are three matters on the calendar that require discussion. Two are uncontested motion sand the third is a 2004 application that is contested.

The first is the trustee's motion for a final order authorizing and approving expedited procedures for the sale or abandonment of Lehman Brothers, Inc.'s de minimis assets.

THE COURT: This is the one we talked about last time?

MR. WILTENBURG: Indeed, Your Honor. And as the Court may recall we were before the Court on October 8th on an emergency basis due to an exigent circumstance that existed with respect to property located in Beijing, China. That situation was addressed under the interim order that was entered at that time. And for purposes of consideration of a final order, at the Court's request, we've provided some additional information, sketching on a non-exclusive basis, categories of assets that would be potentially subject to the abandonment or sale procedures that are described. With some indication of the ranges of book values, at least, that are attached to these categories. And this, again, is based on the activities of Deloitte in drilling down and getting behind balance sheet items to understand assets.

Your Honor, we have received some comments, originally for purposes of the October hearing we had a request by the official creditors' committee of the Lehman Brothers Holdings case to be included as a notice party, and they are so included in the proposed final order.

More recently we've had a request by the asset purchaser, Barclays Capital, to be included as a notice party and the reason for that is the potential for ambiguity or question vis-a-vis particular assets as to whether they are

purchased assets within the meaning of the contractual documentations or excluded assets. And it would be good to understand those issues if there are any, as a particular item is proposed to be sold or abandoned. So that comment too has been taken into account in the proposed final order.

THE COURT: Are those the only changes?

MR. WILTENBURG: Yes, Your Honor.

THE COURT: There are no objections to this and relatively speaking this is ministerial and I'm prepared to approve it. I would note, however, that the supplemental declaration only answered some of the questions that I had posed during the emergency hearing that you reference in your remarks. One of the things that I was interested in knowing was how the trustee determined what was de minimis, the break points in terms of numbers, not just the categories of assets. But this thing has gone for such a long time without being adjudicated and no one seems to care about except me. So I think I'll just approve it and assume that the noticed parties, to the extent there are any issues, will take care of what needs to be taken care of when something's being sold for too little.

MR. WILTENBURG: Thank you, Your Honor.

THE COURT: Ms. Granfield wishes to speak.

MS. GRANFIELD: Yes, Your Honor. Thank you. Lindsee Granfield, Cleary, Gottleib, Steen & Hamilton, LLP, on behalf

of Barclays Capital. Mr. Wiltenburg is quite correct that we resolved any issue in terms of this order for today. But one thing I did want to point out, because partly our interest got very much piqued, actually, by the declaration that Mr. Wiltenburg filed, because we looked at it, and unfortunately we said hey, that's our property. And so this has been dealt with for today in terms of Barclays being a noticed party and, in fact, for a certain amount of time, for this order, getting notice of everything that's proposed.

The order does provide that it's without prejudice to Barclays' asking in January that that period of time to get notice of everything continue at least for a while. And we're obviously not there yet, knowing which way we'll go on that or whether we'll think that's necessary. But we do very much have an interest in making sure that Barclays' purchase assets are Barclays' purchase assets, but not unduly causing dispute or just working things out if there are issues when we see these notices.

THE COURT: Well, maybe you'll find something on the shopping list you'll want to buy.

MS. GRANFIELD: That could happen too.

MR. WILTENBURG: Thank you, Your Honor. I think the next item is the trustee's application to retain and employ Norton Rose, LLP as U.K. counsel, nunc pro tunc, to October 27, 2008. As the Court is aware, the liquidation proceedings or

administration of Lehman Brothers Europe is proceeding in London under the auspices of court-appointed liquidators. And the relationships between LBI and LBIE, as it's called, are complex and substantial, and have the potential to have material effects, both on the estates of the entities involved and interest holders in those estates. And accordingly, the trustee believes it's prudent to have representation present in connection with the proceedings in London, and has selected Norton Rose as particularly good candidate to be the trustee's representative in that forum.

Your Honor, the application is supported by a declaration of disinterestedness executed by Mr. Radford Goodman, who's a partner in Norton Rose, that we believe meets the required standard of disinterestedness under SIPA. We've received no opposition to the application and would request that it be approved.

THE COURT: I'm prepared to approve it in the absence of objection. If there's no objection, it's approved.

MR. WILTENBURG: Finally, Your Honor, there is the motion for a Rule 2004 examination that's being presented by parties identified as the DCP parties, and I will step aside to let them present.

THE COURT: Okay.

MR. MORRIS: Good afternoon, Your Honor. I'm Michael Morris of Hennigan, Bennett & Dorman. We represent what we

refer to as the DCP parties. These are participants in and beneficiaries of various -- or at least two -- deferred compensation programs that were in place at Lehman for many, many years. Some of these participants left the employ of Lehman quite some time ago, some were more recent. We initially were contacted by a group of eight individuals that we currently represent who had been in a process of organizing participants and beneficiaries of these deferred compensation programs, and through the efforts of these eight individuals, they've contacted, as it now stands, approximately 260 additional people who are participants in these programs, and are working to find others. But they do not know, nor do they have possession of a list that would have the universe of people that are beneficiaries of and participants in these programs.

THE COURT: Do you know how large the potential universe is?

MR. MORRIS: We believe, although we can't be certain because we don't have a list, but we believe it's approximately 500 people. And we believe that the neighborhood of the claims is in the range of approximately 500 million. And that is, of course, uncertain at this point, because we don't have the list.

THE COURT: Why is this a group that needs to be jointly represented by the same group of lawyers?

MR. MORRIS: Well, there's nothing inherent that says they have to be jointly represented.

THE COURT: No, I'm just wondering what the purpose is of organizing a group like this and what your firm's purpose is in seeking the names so that you can expand your client list?

MR. MORRIS: The request to expand -- it's not so much to expand the firm's client list. There was an effort --

THE COURT: I didn't mean it the way it sounded.

MR. MORRIS: I understand, Your Honor. It was an effort by these individuals to be sure that they had contacted the universe of people who would have an interest, recognizing that any actions that may be taken, any steps that may be taken, would: a) be of interest to other people who had similarly situated claims, and conceivably could affect what would happen to those claims in the context of the case, depending on what happens and what actions might be taken.

In addition, in terms of sharing of information, the clients that we represent have benefited, they think, substantially and significantly for being able to talk to the people that they have located thus far, all of whom have different pieces of information at times relative to their claims. They have different ideas as to the way in which claims might be protected, what the rights of the claims might be. And this provides a beneficial and fertile source for the

group as a whole in directing its counsel as to what actions it should pursue, where it should direct its efforts, and what would be of interest to the broadest possible group.

THE COURT: I noticed your reference in the papers, and I may have misunderstood this, that this is a program that was insurance-based, at least in part.

MR. MORRIS: That's our understanding, yes.

THE COURT: And what I'm wondering is, if there's an insurance product that is at the bottom of this, why isn't there an insurance company that has a list of its policyholders?

MR. MORRIS: It is our understanding, although we don't have great information with respect to this, as yet, and it's one of the areas in which we would like to get better information, but it's my understanding that there's not a single insurance company that has issued the policies that are related to this plan. There are several. And because this program extended over many, many years, it is entirely possible that policies were issued at various times depending upon what corporate family Lehman was in at the time, the individuals at the time, and the availability of the products. So we don't know of a central place. We don't even know, in many cases, which insurance companies might or might not be involved. So there's no central location that we're aware of that we could go to and obtain such a list or such information.

THE COURT: But surely your existing clients must have some record of the insurance products that were part of the program.

MR. MORRIS: I expect that some do. But we don't believe it's in any way a complete or reliable --

THE COURT: Okay.

MR. MORRIS: -- list of information. The simple fact is, the trustee has, at his fingertips, a list that all we are asking for is the names and addresses of these individuals, so we can send a communication. If they do not wish to participate, that's fine. It would be at an end. The communication would come from this group which we refer to as the steering committee, not necessarily a formal committee, but they are all our clients at this time. It would come from them. And it would be a simple communication to facilitate this organizational process.

We frankly are surprised the trustee has taken the approach of opposing this. His basis for opposing it, we find puzzling at best. We think this is clearly within the scope of Rule 2004. It clearly affects the administration of this case. This also concerns the liabilities of the debtor. But more importantly, it affects how this case will be administered and the ability of this large group of individual creditors to have their interest adequately represented in the context of the case.

THE COURT: Now, I'm hearing you on that and I'm sympathetic to the argument you're making about how this affects the administration. But I don't quite understand how it does. And that's partly because I don't think I understand what it is that this group intends to do, what claims it has, and whether or not these are claims that would simply be routinely handled in the ordinary course of the SIPA proceeding, without the need for a law firm such as yours to become involved, or whether or not these are more extraordinary in nature and claims that might be more creatively articulated, because your firm has a reputation for doing such things. So it's hard for me to imagine that this is just ministerial. What's going on?

MR. MORRIS: Well, Your Honor, the truth is, at this stage of the proceedings, we're not sure that we have a sense of the universe of what might be going on. But there are a number of issues that we think that would be important to this group. Included among those issues are, for example, the very large amount of intercompany claims that were shown on the books of LBI prior to the filing of this Chapter 11 case, and the relative ranking and treatment of those intercompany claims vis-a-vis general creditors of the estate, such as is represented by this group. That could end up being a very crucial and critical issue in this case, and could dramatically affect the distributions that may be made to unsecured

creditors and to the beneficiaries of these deferred compensation plans.

And that's an interest that creditors need to be very aware of, and this group in particular believes that it needs to be very aware of. There are other issues that may come before the Court. We note -- and before I leave the subject of intercompany claims -- that recently there's been at least some attention to that. There has been discussion today about the merits and the size and the importance of intercompany claims. There was a provision inserted into a recent order that deals in some respect with intercompany claims, although candidly, we don't really understand either the purpose or intent of that paragraph as yet. But this could form a very significant issue for creditors of these estates and these beneficiaries in particular.

THE COURT: Is it your position that the group you're trying to assemble has claims that are particular to that group because of the deferred compensation aspects of it, or are these claims, claims that would be typical of a broader class of claimants?

MR. MORRIS: I actually think it's both. In some respects, to the extent that they are general creditors, they share characteristics with other general creditors of this estate. However, as you noted earlier, these deferred compensation plans were put in place with insurance features

and insurance policies.

THE COURT: Who owns those policies?

MR. MORRIS: That is a very significant issue. But I think it will have to be addressed in the context of these cases, and I think that that is a particular issue where the interest of these claimants may diverge from other creditors of these estates. There are also issues relative to -- just as an example, even independent of the issue of ownership, which again, we think may be a very key and important issue in the context of these cases, there's also the issue that a number of the people that might make up this group are, for example, old enough that they would be beyond the age where they could obtain an insurance rating and insurance on their own, and might therefore have -- these are insurance policies on their lives.

They might have a direct interest in those policies, and the trustee's intentions with respect to those policies, and what happens with those policies. So that area in particular is an area in which the interests of these creditors may well diverge from those of other creditors.

There are other issues relative to the history of this particular corporate entity. It has bounced around. It has had different corporate families and different parents. And there may be relative rights that arise by reason of the way in which those combinations and separations occurred.

Truthfully, we don't have any detail on this as yet. It's simply an area of inquiry. So there are certainly going to be some areas in which these creditors would share interest along with other general creditors, but there are a number of areas where they could have particular interests that are divergent and different from other creditors of these estates.

THE COURT: Thank you, very much.

MR. MORRIS: The other aspect that runs through the trustee's opposition to turning over this list is one of confidentiality. And I would like to briefly address that, because I don't think it requires much more than a brief address. It is undoubtedly true that the debtor in this case, and the trustee as successor to the debtor, has confidential information with respect to those people. We are not asking for that information. We do not want any confidential information from the personnel files of these individuals. We're looking only for the names and addresses of creditors of this estate.

We do not believe, under any rationale, simple names and addresses of creditors could be considered to be confidential. Indeed, in most cases that information is publicly disclosed at the outset of the case, and it's only the peculiarities of this case that make it not so. We don't think confidentiality is a valid reason to deny this request. And the third reason advanced by the trustee for the denial of the

request is the notion that we are somehow creating false expectations of some kind on behalf of these participants. We believe that that is unfounded. There's no basis on which the trustee should or could have reason to harbor those suspicions, and we believe it doesn't form a basis for the denial of the motion.

THE COURT: Is that because there are no expectations whatsoever concerning this representation? What are the expectations?

MR. MORRIS: I don't know.

THE COURT: Okay.

MR. MORRIS: And each individual probably has different expectations. But it will not be the role or the result of counsel of creating any expectations that we believe are in any respect false in the minds of our clients. Your Honor, we think that it's a simple request. It can be complied with a very minimum of effort on behalf of the trustee, costing virtually no money. The list we ask for could be delivered before I could return to my office. We think that the motion should be approved.

THE COURT: How far away is your office?

MR. MORRIS: Even if it were down the block, it could be delivered faster than that.

THE COURT: Okay.

MR. MORRIS: Thank you, Your Honor.

THE COURT: I'll hear from the trustee now.

MR. WILTENBURG: Your Honor, David Wiltenburg, Hughes, Hubbard & Reed, representing the trustee. Your Honor, I think omitted from counsel's discussion of the basis for the trustee's opposition was really the central item, and I'll comment on some of the practical and factual aspects of it as well. But basically, it is that there are some things that Rule 2004 is about and is meant to do, and some things that it's not meant to do. And I think that really comes out of the language of the rule itself which provides that the scope of the examination may relate "only to the acts, conduct or property or to the liabilities and financial condition of the debtor or to any matter which may affect the administration of the debtor's estate."

The word "only" there has to have meaning, and I think in order to respect that meaning, it's not possible to grant really expansive understanding to the enumerated matters there. It cuts back against the intent of the specification --

THE COURT: But he's not dealing with that, because "only" appears in the sentence that precedes: "only to acts, conduct or property or to the liabilities and financial condition of the debtor or to any matter which may affect the administration of the debtor's estate or to the debtor's right to a discharge." I think regrettably for your argument, the word "only" appears only in one place and it's set off by ors,

suggesting to a fair reader that the "only" applies to the first part of that, to the "only to the acts, conduct, or property." Because it then picks up "or to the liabilities". So I'm just quibbling with you --

MR. WILTENBURG: Okay.

THE COURT: -- on the strength of that argument.

MR. WILTENBURG: Well --

THE COURT: I'm finding that lacking.

MR. WILTENBURG: -- Your Honor, in support of that, we cited cases at page 3 of our memorandum of law. And those are cases that emphasize the limited qualities of 2004.

THE COURT: There are very few cases that actually emphasize the limited nature of the power of 2004.

MR. WILTENBURG: Well, but --

THE COURT: It's nice that you found some.

MR. WILTENBURG: Okay, Your Honor. Would it be fair to say, could we all agree, that this request that is being made here for the purpose of soliciting creditors, is not within the heartland of what's traditionally been thought of as Rule 2004, and indeed, that there is no authority supporting the idea that a list of creditors for purposes of making solicitations is within the scope of Rule 2004 examination?

Your Honor, I think, looking at the practical side, one question here might be is it really a good idea? I mean the effect of an order granting this application would be that

apparently over 500 persons will receive solicitations from counsel. Near as we can figure, over eighty percent of those persons have rights that are subordinated to the rights of other creditors by contract.

Indeed, all of these people are going to be receiving proofs of claim within the next couple of weeks. And as that process is going forward, each of them will probably be receiving solicitations as well. It may well appear to them that that solicitation is kind of part of the claims process, maybe even that it's endorsed by the trustee or even the Court.

I suppose if the application is granted it would be possible to say to a recipient of the solicitation that the Court has entered an order granting access to your name for the purpose of that solicitation. Most of these parties are going to be -- the vast majority, are going to be subordinated by contract. And that contract provides that their rights are subordinate to all present and future creditors of the applicable Lehman entity. Will it be a good idea? I suppose it would be up to each claimant to seek advice on the question, will it be a good idea to invest legal fees in the protection of a subordinated claim in this case.

THE COURT: Well, that's not what this hearing is about. This hearing is about whether or not the request for those names fits within the ambit of 2004. And one of the questions that I have. People generally pick their battles and

decide what's worth fighting about. And it's obvious that you and your client and others involved in the SIPA case on behalf of the trustee have decided that this is a time to draw a line in the sand with respect to a request that under ordinary circumstances might have just been granted and never got to this level. Say okay, here are the names. Why has this become from the perspective of the trustee such a big deal.

MR. WILTENBURG: Your Honor, we didn't feel comfortable, first of all, just releasing the names without guidance from the Court, without discussion of kind of the unusual quality of that. It might be considered, in this connection, what will happen when another party comes forward saying, well, I would like to know the names of all SWAPS participants or I would like to know the names of all parties having foreign exchange based claims, or I would like to know the names of all creditors in this category or that category going forward. I think it supposes a lot to suppose that each one of those requests would be appropriate, whether in terms of the privacy or considerations that would be personal to creditors, or from the point of view of the policy behind it and the potential for a precedent.

THE COURT: Well, let me understand something which really goes to the essential difference between the SIPA proceeding and the Chapter 11 case. We had some argument earlier today about the schedules and statement of financial

affairs and when those were going to be filed. And we're currently looking at a mid-January date for filing those in the LBHI case. Ordinarily the names of creditors in Chapter 11 cases are in the public domain. They're known because they're scheduled or they're known because there's a repository of proofs of claim in which parties identify themselves. There's no expectation of confidentiality as to that list.

MR. WILTENBURG: Certainly a creditor who files a proof of claim has no expectation of confidentiality.

THE COURT: And there's none with respect to the fishbowl of bankruptcy altogether, because there is a duty on the part of the estate, at least in a Chapter 11 setting, to reveal who's out there with claims, by class, with indications as to whether or not there may even be a dispute with respect to those claims. So what happens in the SIPA case? Is there an ability for a group such as the one represented by movant's counsel to access by category that list?

MR. WILTENBURG: Your Honor, that categorization process will not come to pass under the SIPA regime, and the reason is that there is a provision in the statute that requires identification from the books and records of the debtor, the entire body of persons who may potentially have claims and the mailing of claim forms to those persons. And that is the process that was under discussion two weeks ago as we talked about the claims process and the claims forms that

will be mailed out and published. That body of persons is several hundred thousand, and the process of mailing to them is going forward and hopefully to be completed by December 1st.

THE COURT: I understand, but that's not what I was asking. I wasn't asking about the mailing that's going on. I was asking about the disclosure to the world in an accessible form of the names of the parties who, in fact, have claims. Is there such a vehicle? There would be if this were a Chapter 11 case. I'm simply asking an incredibly nanve question which calls for a very simple answer. And if the answer is well, there's no such vehicle, I think it's meaningful to the pending motion.

MR. WILTENBURG: Well, Your Honor, under I believe it's Rule 1007 --

THE COURT: I know that rule.

MR. WILTENBURG: -- there is provision for the filing of schedules by a debtor and there is no requirement on a trustee to file such schedules.

THE COURT: Well, whether there's a requirement or not, do you have any plan to do so?

MR. WILTENBURG: Your Honor, I think when the investigation that Mr. Kobak referred to is complete, there will be an understanding of the creditor body. Whether it comes in the form of listings of hundreds of thousands of creditors who have claims or potential claims, I don't know

that.

THE COURT: Okay. I'm going to assume that that means probably not. Do I assume correctly?

MR. WILTENBURG: Your Honor, I don't know otherwise. I'm willing to assume that for purposes of this hearing that it will not --

THE COURT: Let's assume for purposes of this hearing that it's your position on behalf of your client that there's no obligation to file publicly accessible documents that are equivalent to the schedules that would be filed in accordance with Rule 1007. Is that a fair assumption?

MR. WILTENBURG: Yes, Your Honor. I think that's the case.

THE COURT: Okay.

MR. WILTENBURG: Your Honor, finally, it appears that the Hennigan firm has already succeeded in contacting half or more than half of the persons who it believes are in this category. That's a substantial percentage. Now, the question is whether contacting of the other half is going to be basically ordered pursuant to Rule 2004. As it now stands, even the fact of this motion and the hearing we're having on the record today, it's a matter of public record that such a group exists with respect to these DCP claimants. The names of the counsel that may be contacted on the part of parties who are interested enough to do so, that's a matter of public

record.

Your Honor, I would suggest that just as a matter of exercise of discretion, which is of course what we're talking about here, there's no real cause to change the position of the parties to upset the playing field as it exists. Parties who have seen what happens and have the interest in proceeding know what to do without the imposition of a Rule 2004 examination. Thank you, Your Honor.

THE COURT: Okay. Is there anything more on this?

MR. MORRIS: Very briefly. The Court's not ordering any solicitation. The Court, if it grants our motion, is simply delivering to us a list, and our clients will decide if they wish to make such a solicitation. I expect they will. The fact that our clients have been able to contact roughly half of the potential body only argues for the release of the list, because otherwise the group becomes simply haphazard in terms of who learned about the organization of group pulling others who don't know of it but might like to participate. And without a vehicle to figure out what the universe is and contact them, it leaves those people potentially who might desire to join the group unable to do so. I won't belabor any of the other points. We would ask that the motion be approved.

THE COURT: Okay. What I'm going to do with this is a little bit unusual relative to how I've handled contested matters in this case up to this point. I want to think about

this a little bit, and I'm going to take it under advisement and we'll endeavor to rule on this at the next omnibus hearing on the 3rd of December. I have my thoughts on this but I'd like to also collect them and give some further consideration to the 2004 scope that is really appropriate in the SIPA case as it relates to other similarly situated parties who may be seeking information of the same sort as is being requested by the DCP class.

And after giving that some thought, I'll provide a ruling at some point during the 12/3 hearing and simply ask that it be carried as an agenda item in the SIPA case, with the understanding that I'll say something that will be the functional equivalent of a ruling, or I'll have written something. But there will at least be a ruling.

MR. WILTENBURG: Thank you, Your Honor.

THE COURT: Is there anything more for today?

MR. MILLER: No, Your Honor. We're finished.

THE COURT: That's fine. We're adjourned.

IN UNISON: Thank you, Your Honor.

(Proceedings concluded at 4:52 p.m.)

I N D E X

R U L I N G S

DESCRIPTION	PAGE	LINE
Debtors' application to employ and retain Weil, Gotshal & Manges LLP under a general agreement granted on a final basis	24	24
Debtors' application to employ and retain Curtis, Mallet-Prevost, Colt & Mosle LLP as conflicts counsel nunc pro tunc to 9/26/08 granted	25	6
Debtors' application to employ and retain Simpson Thacher & Bartlett LLP as special counsel to the debtors nunc pro tunc to commencement date granted	25	21
Creditors' committee application to retain and employ Milbank, Tweed, Hadley & McCloy LLP as counsel effective 9/17/08 granted	26	7

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DESCRIPTION	PAGE	LINE
Creditors' committee application to retain and employ Quinn Emanuel Urquhart Oliver & Hedges, LLP as conflicts counsel effective 9/17/08 granted	26	12
Creditors' committee application to employ and retain FTI Consulting Inc., as financial advisor granted	26	17
Debtors' motion to enter into a transition services agreement with Lehman Europe granted	32	1
Debtors' motion for authorization to implement the retention and recruitment program approved	34	1
Debtors' amended motion to further extend the time to file the debtors' schedules, statement of financial affairs and related documents granted	34	19
SunCal entities motion for an order granting relief from the automatic stay denied without prejudice	80	5

I N D E X, cont'd

C E R T I F I C A T I O N

I, Clara Rubin, certify that the foregoing transcript is a true and accurate record of the proceedings.

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CLARA RUBIN

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Date: November 22, 2008